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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 649

ANTOINE SONGY, GEORGE ENGLAD, NORBERT TASSIN, JR., CHESTER DRIVER, HARDING FARLOUGH, JAMES JONES, ALEX JOHNSON, EDWARD HALL, JOSEPH MASON, LYNN OCKMAN, STEPHEN WEBER, HARRY MONTZ, AND LOCAL NO. 1124, UNITED PACKINGHOUSE WORKERS OF AMERICA,

Petitioners,

vs.

GODCHAUX SUGARS, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE TWENTY-NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA.

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PETITION FOR A WRIT OF CERTIORARI TO THE TWENTY-NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Twenty-Ninth Judical District Court in and for the Parish of St. John the Baptist, State of Louisiana, entered in the above-entitled cause on August 29, 1955.

OPINION BELOW.

The judgment of the court below finding the petitioners guilty of contempt (Tr. 296)* is unreported. Likewise unreported are the judgment granting a preliminary injunction entered on May 21, 1955 (Tr. 137) and the oral ruling of the court prior thereto (Tr. 994).

The judgment entered on August 29, 1955, the judgment granting a preliminary injunction of May 21, 1955, and the lower court's oral ruling are printed in Appendix A hereto, *infra*.

JURISDICTION.

The judgment of the Twenty-Ninth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana, was entered on August 29, 1955 (Tr. 296). A written motion for a new trial, in which the federal constitutional issues herein sought to be presented were raised (Tr. 299, 301) was denied on August 29, 1955 (Tr. 300). Application was made to the Louisiana Supreme Court for writs of certiorari, prohibition, and mandamus to review the actions of the trial court on September 16, 1955 (Tr. Vol. IV, 288). The application was denied on September 30, 1955 (Tr. 302, Vol. IV, 379). An order was entered by Mr. Justice Reed on December 28, 1955 extending the time for filing a petition for certiorari to and including January 28, 1956.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

The motion for a new trial and the application for writs

* The Transcript of Record in the trial court is contained in three volumes, consisting of pages 1 to 1900, inclusive. The Transcript of Record in the Louisiana Supreme Court is designated as Volume IV, the pages of which are numbered 1 to 381, inclusive. Whenever reference is made to any portion of Volume IV, the volume number is given in addition to the page or pages.

of certiorari, prohibition, and mandamus to the Louisiana Supreme Court are printed in Appendix B, *infra*.

QUESTIONS PRESENTED.

1. Does a trade union, by voting to strike in an effort to gain better wages and working conditions, thereby constitute itself into a body of conspirators so as legally to make the union and its officers and executive board members responsible, as co-conspirators, for every act of violence committed in the area of the strike, irrespective of whether the act was committed by a union member, a non-member, or a person unknown? Does not a ruling that a union in such a fashion becomes a body of conspirators, upon which later contempt convictions of the union and the union's officers and executive board members are predicated, deprive the union and those individuals of due process of law?

2. Is it not a denial of due process of law to find individuals guilty of contempt of an injunction order where the only connection between the individuals and the specific acts proved to have been committed in violation of the injunction, many of which acts were committed by persons unknown, is an alleged but unproved conspiracy?

3. May a trade union and the officers and executive board members of the union be found guilty of contempt of an injunction order consistently with due process of law, on the ground that they are members of a conspiracy to engage in violence against an employer, even though there is no evidence of such a conspiracy and no evidence showing or tending to show that the union or any of its officers or executive board members instigated, authorized, ratified, or adopted any act in violation of the injunction?

CONSTITUTIONAL PROVISION INVOLVED.

The Fourteenth Amendment to the United States Constitution:

> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

STATEMENT.

Petitioners were found guilty of contempt of the authority of the Twenty-Ninth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana. Each individual was "sentenced to imprisonment for a term of sixty (60) days, and to the payment * * * of a fine of One Hundred and Fifty Dollars ($150.00), in default of which payment * * * the term of the person so failing to pay to be extended for an additional thirty (30) days * * *" The sentences of imprisonment and fine were suspended as to each person "so long as there is no further violation of the preliminary injunction * * * by such person, or by any person or persons acting in concert with him, or under his influence, persuasion or inducement." Local No. 1124 was sentenced to pay a fine of One Thousand Dollars (Tr. 296-98; Appendix A, *infra*).

These convictions and sentences for contempt grew out of a strike called by Local 1124, United Packinghouse Workers of America, against the respondent, Godchaux Sugars, Inc. on April 14, 1955. Local 1124, UPWA-CIO, is the bargaining representative for the approximately 850 production and maintenance employees of respondent (Tr. 1686). The individual petitioners are twelve of the thirteen elected officers and Executive Board members of Local 1124.

A. PROCEEDINGS BY RESPONDENT FOR INJUNCTIVE RELIEF.

On May 9, 1955 the respondent Godchaux Sugars, Inc. filed a petition for an injunction in the court below (Tr. 2). Pursuant to the prayer of the petition a temporary restraining order was issued on that day without notice or hearing (Tr. 32). The order prohibited a wide range of activities on the part of Local 1124, UPWA-CIO, certain named members, including petitioners Songy, Englad, and Tassin, and "their agents, representatives, employees and pickets, and any and all persons acting for or on their behalf, or under their influence, inducement or persuasion, or in concert with them * * *" (Tr. 33). The terms of the temporary order were identical with those of the preliminary injunction issued subsequently (Tr. 137; Appendix A, *infra*).

The Pleadings.

The petition filed by the respondent Godchaux Sugars, Inc. named as defendants Local 1124, UPWA-CIO, and twenty individuals, including three of the petitioners, namely, Antoine Songy, President of Local 1124, George Englad, Vice-President of the local, and Norbert Tassin, Jr., Recording Secretary of the local (Tr. 2-3). The petition alleged that the respondent was engaged in operating a sugar refinery located at "Reserve Plantation", Louisiana, that its production and maintenance employees had been represented for many years by Local 1124, UPWA-CIO, that the respondent and the union had engaged in lengthy negotiations looking toward the formation of a new contract but without reaching agreement, and that its employees went on strike on April 14, 1955 (Tr. 3-4).

The petition then charged in paragraph VI (Tr. 5):

> At some time or times prior to the filing hereof, the exact times of which are known to defendants but

not to petitioner, the Union, through its officers, agents and representatives, and the other named defendants herein, together with others working in concert with defendants, and under their influence, inducement and persuasion, whose names are not presently known to petitioner or who are too numerous to mention herein, entered into a conspiracy against petitioner and its employees to conduct a campaign of violence, terrorism, damage and illegal trespass with the purpose in view of preventing all of petitioner's present or prospective employees, because of fear of their lives, persons and property, from working for petitioner in any capacity.

The petition alleged further that pursuant to the conspiracy the "defendants and those acting under their influence, inducement and persuasion and in concert with them" have repeatedly engaged in mass picketing and acts of violence (Tr. 5-6), "intimidated, threatened and coerced petitioner's employees" (Tr. 9) and performed other harassing and malicious acts (Tr. 17). Certain of the acts claimed to have been committed were alleged specifically (Tr. 17-20).

The answer filed by the defendants below, including three of the petitioners here, denied the allegations of conspiracy and violence, and asserted that the strike action taken by the union and its members was "only for legal objectives and for the recognition of their claims for higher wages, better working conditions, and other matters incidental thereto" (Tr. 132).

Hearing on Rule for Preliminary Injunction.

A hearing was held on May 17th to 21st, 1955, inclusive. The evidence presented by the respondent Godchaux Sugars, Inc. may be summarized as follows:

1. Testimony by union members and officers to the effect that the members of the union joined in

the strike and were working together to try to accomplish the ends and purposes of the strike, and that the union set up a strike organization and a system of committees for the purpose of succeeding in the strike (Tr. 423, 426-27, 429-30).

2. Testimony by respondent's officers and supervisory personnel to the effect that "I think in view of a situation like this where there is a strike going on and it is to the interest of the strikers to prevent any and all operations of the company, and in view of the known activities of strikers, that there is such a conspiracy" (Tr. 472); and that "I know that a conspiracy exists at the Union Hall to stop this company from doing business because of the execution and direction of a large number of acts of intimidation involving up to hundreds of people, and also involving union officers, union members, and union pickets" (Tr. 696).

3. Testimony as to incidents characterized as "mass picketing" (Tr. 470-71, 682-85), stopping of cars and trucks (Tr. 450-53, 588-95), beatings (Tr. 524-25), threatening statements and use of the epithet "scab" by strikers (Tr. 654), incidents on the picket line (Tr. 685-91, 482-83), and other purportedly violent or unlawful acts.

The respondent Godchaux Sugars, Inc. introduced no evidence connecting any of the petitioners with any incident of violence or disorder. Nor did respondent present any evidence to show or tend to show that any of the petitioners authorized, instigated, or ratified any of the acts. One witness did identify petitioner George Englad as being on the picket-line at the main gate of the Godchaux refinery on May 2, 1955 (Tr. 683). Apart from this, however, the only testimony relating to any of the twelve individuals who are here petitioners had to do with their general responsibilities and duties, as officers and Executive Board members of Local 1124, in connection with the conduct of the strike (Tr. 741-45).

In short, the evidence as to the twelve individual petitioners added up to this: they were the officials of a union on strike, during which strike "mass picketing" and other "incidents" took place. As for Local No. 1124 the evidence established only that it was a union on strike.

Ruling of the Trial Court.

At the conclusion of the hearing the judge announced that he would grant a preliminary injunction as prayed for in the petition (Tr. 994). Concluding that a conspiracy had been established, the court expressed itself as follows (Tr. 994-96; Appendix A, *infra*):

> In my opinion, as a judge and as a lawyer, when an association, such as a union is formed, for the purposes for which the union is formed, they absolutely become a body of conspirators; because their main objective is to better their condition, and in order to better their conditions and to discuss the phases that must happen when they make their demands in order to improve their conditions, they formulate their plans and they go to the heads of the organization and lay their claims and plans before them. Then if the head of the organization can not meet the demands of the union, the union begins to bargain with the organization. Then if they cannot reach an agreement, the union takes a vote as to whether or not they will strike.
>
> The moment they take that vote, it becomes what is called legally a "body of conspirators." They, among themselves, agree to do this, that, or the other thing; and that becomes, or forms a part of a "conspiracy."
>
> Then they put out what is called their "pickets"; these pickets form what is known as a "picket line", and whether or not there is actual violence on that picket line, the acts of the pickets are the acts of the union; and any overt act, whether by a single individual or by a group of individuals, resulting in

violence or any other violation is the act of the union. And of course, when they "get by" with a single act, they get stronger and go further in their actions.

I don't believe these people here realize what "conspiracy" means. They don't realize what an "overt act" means. They don't realize that in the perpetration of violence, the union might post all over the hall, "We don't want you to lay your hands on anybody", yet if violence is committed it is the act of the union as well as the act of the person or persons who perpetrated or inflicted the violence. They don't realize that although the act was not preconceived, that although the union has told them "we want no violence", if violence results, from that act, then the whole union is responsible as the parties who committed that act.

That, my friends, is the law.

The preliminary injunction order was entered on May 21, 1955 (Tr. 137; Appendix A, *infra*).

B. CONTEMPT PROCEEDINGS.

Respondent's Motion for Citation for Contempt.

On June 9, 1955 the respondent filed a Motion for Citation for Contempt (Tr. 207). The motion recited the issuance of the preliminary injunction and alleged that it "was based upon the proven allegations of the petition * * *" (Tr. 207). It listed as members of the Executive Board of the union the twelve petitioners, alleging that they were in charge and control of the union's strike organization (Tr. 209). Paragraphs IV and V of the Motion then stated (Tr. 209-10):

> As established by the record herein, the Union was responsible in law for the illegal acts complained of by plaintiff in plaintiff's original petition. The members of the aforesaid Executive Committee, as the duly authorized body of the Union in charge of the strike activities, which activities were carried on un-

der their direction and control, were similarly responsible in law as co-conspirators for the illegal acts committed by the Union members and those acting in concert with them, or under their influence, inducement or persuasion.

Subsequent to the issuance of the temporary restraining order herein on May 9, 1955, and to the issuance of the preliminary injunction on May 21, 1955, plaintiff is informed and believes and therefore avers, that said elaborate strike organization has continued to exist and function under the direction and control of the said Executive Committee and its members; that the said Union and its members and the said members of its Executive Committee, have continued to pursue, as co-conspirators, the conspiracy charged in plaintiff's petition herein; and that the Union, and the said members of its Executive Committee are responsible in law for each of the acts and things hereinafter complained of as having been committed or done pursuant to said conspiracy.

The motion alleged that pursuant to the conspiracy "the union, its members, and those acting in concert with them, or under their influence and persuasion, have repeatedly violated the temporary restraining order issued herein, and, after its issuance, the preliminary injunction" in thirty-seven itemized instances (Tr. 210-25). As a catch-all provision, the motion alleged further that "other instances of violation of the injunctive orders of the court rendered herein have occurred but are too numerous to detail here. Plaintiff reserves all rights to assert such other instances in all appropriate manners" (Tr. 226).

Of the thirty-seven specific instances of acts in violation of the temporary restraining order or preliminary injunction, not one of them names the union or any of the twelve individual petitioners as the perpetrator of the act. In fact, in twenty-three of the instances there is no allegation as to the identity of the person or persons

committing the act apart from general language to the effect that the respondent believes and so alleges that the act was committed "by a striking union member or members or those acting in concert with them in furtherance of said conspiracy" (Tr. 225).

Paragraphs VIII and IX of the motion assert:

> Plaintiff avers that, by reason of the matters and things hereinabove alleged, the aforesaid United Packinghouse Workers of America, Local No. 1124 (C.I.O.) has been, and continues to be, guilty of contempt of the lawful authority of this court and has violated and will continue to violate the injunction orders of this court rendered herein, and hence should be cited through its officer or officers to appear and respond for such contempt.
>
> Plaintiff avers that, by reason of the matters and things hereinabove alleged, the aforesaid Antoine Songy. * * * [naming the other officers and executive board members, petitioners herein] * * * as individuals and as members of the Executive Committee of the said union have been, and continue to be, guilty of contempt of the lawful authority of this court and have violated or caused to be violated the said injunctive orders of this court, and hence should be cited to appear and respond for such contempt (Tr. 227).

Pursuant to this motion, the court entered a citation to show cause directed to the union and individuals named in the motion, including each of the twelve petitioners herein, commanding them to show cause why they should not be adjudged guilty of contempt of the authority of the court and punished according to law (Tr. 236).

Hearing on Citation for Contempt.

The hearing on the citation for contempt commenced on June 15, 1955 and continued thereafter, with some interruptions, until its conclusion on July 8, 1955 (Tr. 1900, 1893). The judgment of the court finding Local 1124, UPWA-CIO, the twelve individual petitioners, and certain of the other individuals named as defendants guilty of contempt was entered on August 29, 1955 (Tr. 296).

The evidence introduced by respondent to show that the petitioners were guilty of contempt of the court's injunction of May 21, 1955 consisted, in essence, of the following:

1. Testimony as to a number of fires on the property of respondent's personnel which were suspected to be of incendiary origin (Tr. 1005-18; 1184-1207; 1260-62; 1269-71; 1413-20; 1421-32; 1438-45; 1452-59). In no instance was any individual, whether a member of the union or not, identified as having anything to do with setting any of these fires.

2. Testimony as to shots being fired at houses and cars of respondent's personnel, guards, and nonstriking workers (Tr. 1258-60; 1294-1305; 1351-67; 1432-38; 1858-62). The persons firing the shots were not identified.

3. Testimony as to beatings administered to Godchaux personnel by unknown persons (Tr. 1087-98; 1106-20; 1125-30; 1224-31).

4. Testimony as to overturning and setting fire to canecars belonging to the respondent company (Tr. 1310-24; 1489-1502; 1893-97). The perpetrators of these acts were not identified and were not known to the witnesses.

5. Testimony as to annoying or intimidating letters and telephone calls to non-striking employees and their families (Tr. 1121-24; 1208-10; 1368-79; 1382-83). The callers and writers were not identified.

6. Testimony as to cars being driven in a reckless or suspicious manner, the drivers and occupants not being identified (Tr. 1045-51; 1078-80; 1325-40; 1344-50; 1393-1412).

7. Testimony as to finding roofing nails in the tires of a truck and sugar in the gasoline tank of a car (Tr. 1083-86; 1445-52).

8. Testimony as to objects being thrown by unknown individuals at the houses and cars of persons connected with respondent (Tr. 1286-90; 1383-92; 1503-12).

9. Testimony as to threatening statements and gestures by four men directed to an employee of respondent while in a restaurant (Tr. 1552-60). The men were not identified.

10. Testimony as to the accosting and stopping of trucks bound for the Godchaux plant by aggregations of persons not identified, but presumed to be strikers (Tr. 1045-46; 1052-76).

11. Testimony as to supposedly improper or objectionable actions involving automobiles driven or occupied by individuals identified as, or assumed to be, union members (Tr. 1019-44; 1131-59; 1160-83; 1460-79; 1533-52). In no instance was the named individual an officer or Executive Board member of Local No. 1124, nor was it shown that the local union or any officer or Executive Board member authorized, ratified, or approved the conduct.

12. Testimony as to occasions when individual strikers used the term "scab" in referring to non-strikers (Tr. 1297-1305; 1382-92; 1480-87). No officer or Executive Board member of Local No. 1124 was in any way involved.

13. Testimony as to the parking of a car occupied by two named union members and two unidentified men near the house of a non-striking employee (Tr. 1210-23). No connection was shown between the actions of these individuals and Local No. 1124 or the officers and Executive Board members of the Local.

14. Testimony as to the shooting of an armed guard hired by respondent. The shots apparently were fired from a passing car, which was described as a 1946 or 1947 maroon Ford. The occupants of the car were not identified. Subsequently, two union members were arrested and charged with attempted murder (Tr. 1232-58; 1462-71; 1513-32; 1569-1629).

All of the union members who were identified as having participated in any of the specific incidents were found guilty. Five union members named as defendants in the contempt citation who were not identified as having participated in any incident were not found guilty. Local No. 1124 and twelve of the thirteen officers and Executive Board members were also found guilty (Tr. 296-98). The one Executive Board member not found guilty, although named in the contempt motion (Tr. 209, 227) and citation (Tr. 230), was the sole woman member of the Board.

The respondent, at the contempt trial, made no effort to prove conspiracy, and in fact proceeded on the assumptions that it had proved and that the court had found a conspiracy to exist at the time the temporary injunction was entered at the contempt trial. The respondent introduced no evidence, and the record is wholly barren of any evidence, showing or tending to show that the local union or its officers and Executive Board members, or any of them, participated in, authorized, ratified, adopted, or approved any act in violation of the injunction.

Necessarily, therefore, the findings of guilt as to Local No. 1124 and the individual officers and Executive Board members rest on the court's conclusion, expressed on May 21, 1955, that the union, by voting to strike, had constituted itself into a body of conspirators (Tr. 994-96; Appendix A, *infra*).

REASONS FOR GRANTING THE WRIT.

1. The issues presented are of major importance in the field of labor relations, involving the very right of a union to engage in strike activity. The court below has resorted to views as to the nature of a labor union which, in most parts of the country, lost favor following the landmark decision of Chief Justice Shaw of the Supreme Judicial Court of Massachusetts in *Commonwealth* v. *Hunt*, 4 Metc. 111 (1842). Realistically, the trial of a local union and its officers and Executive Board members on charges of criminal contempt, for violation of an injunction grounded on the notion that by taking a strike vote the union constituted itself into a body of conspirators, is no different from the 18th and early 19th century practice of trying workingmen who banded together for mutual protection for the crime of criminal conspiracy.

Given the circumstance that the South is the last major part of the country in which labor is still relatively unorganized, the growing industrialization of the area, and the recent history there of bitter and prolonged strikes, it is inevitable that Southern employers should attempt to use all the legal weapons available to them to frustrate organization of their employees. Nothing could serve them better than the long-abandoned doctrine that organizations of workers using economic pressures to improve their wages and working conditions are conspiracies.

To allow this pernicious view to remain uncorrected is to sanction precedent for and to encourage last-ditch resistance upon the part of employers in the South to the raising of labor standards and conditions to the levels prevailing in other parts of the country. The unadorned manner in which the trial court expressed itself in finding the conspiracy and the unlimited responsibility of the union and its members as conspirators (Tr. 994-96; Appendix A,

supra) is indication that lawyers and judges in the area feel no need to dissimulate. They have confidence in the adequacy of early 19th century law, discredited elsewhere, to solve their mid-20th century labor problems.

2. The findings of guilt as to the local union and twelve of its officers and Executive Board members present significant issues of constitutional rights under the due process clause. May an individual, an officer of a labor union, be found guilty of contempt of an injunction, consistently with due process of law, where there is literally no evidence presented as to his participation in any action in violation of the injunction? Where there is nothing to show authorization, instigation, ratification, or adoption of any act in violation of the injunction? Where there is nothing to connect him with any of these acts except a judicial assumption of conspiracy?

Are a striking union and its officers and Executive Board members responsible for every wrongful or mischievous act of every person within an area in which the strike is in progess? Where most of the acts claimed to be in violation of the injunction were committed by persons unknown, not even shown to be union members? Where many of the acts could have been committed by anybody, including persons anxious to discredit the union, perhaps by agents provocateurs?

Has the conspiracy concept become so elastic and the responsibility of supposed conspirators so vicarious that it is no longer necessary even to show that a given act was committed *by a conspirator* and that it was committed *in furtherance of the conspiracy* before all the other conspirators can be held equally guilty with the perpetrator of the act? Is it not an affront to the most elementary notions of due process of law, in a trial for criminal contempt, to permit dozens of witnesses to give hundreds of pages of testimony as to acts committed by persons unidentified in any fashion whatsoever? Have the notions of conspiracy

and contempt, when applied to a strike situation, now produced a doctrine of guilt by presumed association with persons unknown?

The court below has so far departed from the standards usually prevailing in causes involving criminal sanctions as wholly to substitute presumptions for proof. In effect, the court has taken it for granted that the various unlawful and improper acts shown to have been committed were and could only have been the consequence of the actions of a body of conspirators, headed and directed by the union's officers and Executive Board members. The finding of guilt as to the local union and its directing individuals amounts to the application to unions of virtual absolute vicarious liability. Fortified with such views, the court admitted evidence not even remotely connected with any of the defendants and proceeded to employ it to fasten guilt upon them.

That the court's actions raise basic issues of due process of law seems obvious. The fact that these issues arose in a labor dispute serves to emphasize their importance and the need for their authoritative determination.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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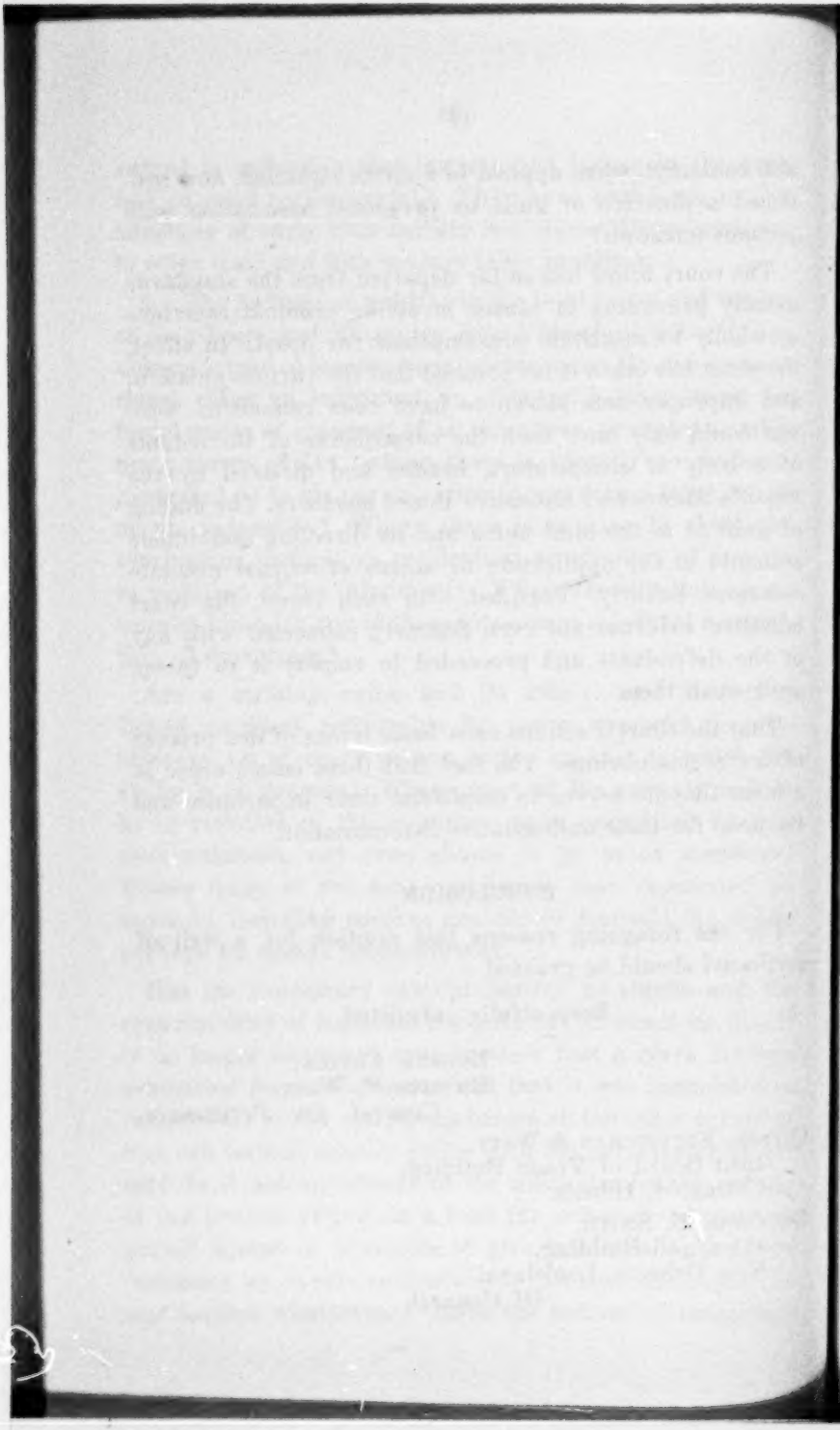

APPENDIX A.

GODCHAUX SUGARS, INC.,
versus
PRENTICE TAMPLAIN, ET AL

No. 564.

Twenty-Ninth Judicial District Court in and for the Parish of St. John The Baptist, State of Louisiana.

S/ HAROLD L. MONTEGUT,
Clerk.

Filed: August 29, 1955.

JUDGMENT ON RULE FOR CONTEMPT.

The rule for contempt taken in this matter on June 9, 1955, by Godchaux Sugars, Inc., against United Packinghouse Workers of America Local No. 1124 (C. I. O.) and others, came on for trial commencing on June 15, 1955, and continuing until July 8, 1955. After submission of briefs, and argument of counsel for all parties heard on August 15, 1955, the Court took time to consider.

When after hearing pleadings, evidence, argument of counsel, and taking time for deliberation, the Court considering the defendants in rule hereinafter named to be guilty of contempt of the authority of this Court by having violated the preliminary injunction granted in the proceedings under date of May 21, 1955, for the reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that, as to the defendants hereinafter named, the said rule be made absolute, as follows:

1. IT IS ORDERED, ADJUDGED AND DECREED that United Packinghouse Workers of America Local No. 1124 (C. I. O.), a defendant in rule, is guilty of contempt of the authority of

this Court, and the said United Packinghouse Workers of America Local No. 1124 (C. I. O.) is hereby sentenced to pay a fine of One Thousand and No/100 ($1,000.00) Dollars.

2. IT IS ORDERED, ADJUDGED AND DECREED that Antoine Songy, George Englade, Norbert Tassin, Jr., Chester Driver, James Jones, Edward Hall, Lynn Ockman, Harry Montz, Harding Farlough, Alex Johnson, Joseph Mason, Stephen Weber, Ruffin Montz and Roy Borne, defendants in rule, are, and each of them is, guilty of contempt of the authority of this Court, and the said persons are each sentenced to imprisonment for a term of sixty (60) days, and to the payment by each of a fine of one Hundred and Fifty Dollars ($150.00), in default of which payment by any of said persons, the term of the person so failing to pay to be extended for an additional thirty (30) days; provided, however, that the sentences of imprisonment and of the payment of the fines above set forth shall be suspended as to each such person so long as there is no further violation of the preliminary injunction issued herein on May 21, 1955, by such person, or by any person or persons acting in concert with him, or under his influence, persuasion or inducement.

3. IT IS ORDERED, ADJUDGED AND DECREED that Dewey "Airline" Weber, Robert Michel, Roland Triche, Dennis Remondet, Cleveland Remondet, Murphy Louque, Oscar Entremont, Sidney Williams and Ernest Washington, defendants in rule, are, and each of them is, guilty of contempt of the authority of this Court and the said persons are each sentenced to imprisonment for a term of sixty (60) days, and to the payment by each of a fine of One Hundred and Fifty Dollars ($150.00), in default of which payment by any of said persons the term of the person so failing to pay to be extended for an additional thirty (30) days; provided, however, that the sentences of imprisonment (but not the imposition of the fines) above set forth shall be

suspended as to each such person, such suspension being conditioned, as to each such person, (a) upon the payment by such person, within two (2) calendar days from the date of imposition of sentence, of the fine imposed upon him as above, and (b) upon there being no further violation, of the preliminary injunction issued herein on May 21, 1955, by such person, or by any person or persons acting in concert with him, or under his influence, persuasion or inducement.

4. IT IS ORDERED, ADJUDGED AND DECREED that Wilfred Stevenson and Mathew Morgan, Jr., defendants in rule, are, and each of them is, guilty of contempt of the authority of this Court, and the said Wilfred Stevenson and Mathew Morgan, Jr., are each sentenced to imprisonment for a term of sixty (60) days, and to the payment by each of them of a fine of One Hundred and Fifty Dollars ($150.00), in default of which payment by either of said persons, the term of the person so failing to pay to be extended for an additional thirty (30) days.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all costs in this contempt proceeding shall be paid by the defendants in rule above found guilty of contempt.

JUDGMENT READ, RENDERED AND SIGNED in open Court at Edgard, Louisiana, this 29th day of August, 1955.

s/ L. ROBERT RIVARDE,
Judge.

I hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

(SEAL)

HAROLD L. MONTEGUT,
Clerk & Ex Officio Recorder,
Parish of St. John The Baptist, Louisiana.

GODCHAUX SUGARS, ET AL. *vs.* PRENTICE TAMPLAIN, ET AL.	No. 564. Twenty-Ninth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana,

/s/ HAROLD L. MONTEGUT,
Deputy Clerk.

Filed: May 21, 1955.

JUDGMENT OF PRELIMINARY INJUNCTION.

This cause came on for hearing before the Court at Edgard, Louisiana on the 17th day of May 1955:

Present:

H. H. Hillyer, Jr., of Milling, Saal, Saunders, Benson & Woodward, New Orleans, Louisiana,
Lloyd Himel, of Martin & Himel, Lutcher, Louisiana,
Richard C. Keenan, of Kullman & Lang, New Orleans, Louisiana, Attorneys for Plaintiff, and
Benjamin E. Smith, of New Orleans, Louisiana, and Clarence Frost, of Reserve, Louisiana, Attorneys for Defendants.

Whereupon after trial of the Rule Nisi for preliminary injunction on May 17th, 18th, 19th, 20th, and 21st, and after due proceedings had, and after argument of counsel, the Court, considering the law and the evidence to be in favor of plaintiff and against the defendants, rendered the following judgment to wit:

It Is Hereby Ordered, Adjudged and Decreed that, during the pendency of these proceedings, and until final judgment herein, the defendants, United Packinghouse Workers of America, Local #1124 (CIO), and Prentice Tamplain, Leon Scioneaux, Ernest Scioneaux, Wallace Gauthe, Joe (alias "Crip") Madere, Roland Triche, Lorry Triche, Edwin

Acosta, Paul Triche, Mederic Vicknair, Edgar Vicknair, Robert Michel, Joe Garantino, Ruffin Montz, William (alias "Yum") Madere, Joe Acosta, Helmuth Montz, Antoine Songy, George Englade and Norbert Tassin, Jr., and their agents, representatives, employees and pickets, and any and all persons acting for, or on their behalf, or under their influence, inducement or persuasion, or in concert with them, be and they are hereby enjoined and restrained, in any connection with the striking and picketing of petitioner's Sugar Refinery at Reserve, Louisiana, from engaging in any assaults and other acts of violence upon petitioner's officers, employees, prospective employees, and any and all persons having occasion to pass into petitioner's refinery, or to be in the vicinity of petitioner's refinery and sugar mill; from committing any acts of sabotage or damage or destruction to property of petitioner, its officers, agents and employees, or that of any persons, firms or corporations found at or in the vicinity of petitioner's refinery and sugar mill at Reserve, Louisiana; from hurling missiles at persons and vehicles entering or leaving petitioner's sugar mill and refinery at Reserve, Louisiana, or proceeding in the vicinity thereof; from threatening death or bodily harm to any person entering or leaving petitioner's sugar mill and refinery at Reserve, Louisiana, or anywhere within the jurisdiction of this Court; from trespassing upon the property of petitioner and particularly its Reserve Plantation located at Reserve, Louisiana; from blocking, in any manner, ingress or egress to petitioner's refinery and sugar mill at Reserve, Louisiana, and to the roads, highways, lanes, railroad tracks, and other approaches thereto; from employing at any picket station or post at or near petitioner's sugar mill and refinery at Reserve, Louisiana, more than two (2) pickets; from employing at any picket station or post at or near petitioner's sugar mill and refinery at Reserve, Louisiana, pickets who

are not always and constantly moving; from maintaining picket stations and/or posts at any localities other than (i) on State Highway No. 1 at its intersection with Avenue A in Reserve, Louisiana, (ii) on Avenue A in Reserve, Louisiana, at its intersection with the road leading along the north side of the Illinois Central Railroad, (iii) at a point on the road leading along the north side of the Illinois Central Railroad approximately equidistant between Avenue X and Plantation Road, in Reserve, Louisiana, and (iv) at a point on State Highway No. 1 at the main entrance to petitioner's refinery and sugar mill at Reserve, Louisiana; from warning, threatening and adjuring petitioner's employees and other persons having occasion to enter petitioner's refinery and sugar mill at Reserve, Louisiana, not to enter therein; from following automobiles proceeding to or from petitioner's sugar mill and refinery at Reserve, Louisiana, or in the vicinity thereof, or within the jurisdiction of this Court, with an object or purpose of intimidating the occupants thereof or doing any other unlawful act; from hurling abusive and offensive epithets likely to induce a breach of the peace at petitioner's employees and others passing picket stations and posts or elsewhere within the jurisdiction of this Court; from forcibly stopping, by use of automobiles, or by any other means, the progress of vehicles passing into or out of petitioner's refinery and sugar mill in Reserve, Louisiana, or passing picket posts and stations, or proceeding in the vicinity of said refinery and sugar mill or within the jurisdiction of this Court; from subjecting petitioner's officers, supervisors and employees, and their families, to annoying, harassing and repetitive telephone calls with an object and purpose of intimidating the recipients of the calls or with an object and purpose of preventing their rest, relaxation, and sleep; from hurling gravel, rocks and other objects and substances into and at the homes of petitioner's offi-

cers, supervisors, and other employees; from the repetitive driving of automobiles in a noisy, hornblowing manner before the homes of petitioner's officers, supervisors and employees with an object of harassing, annoying and intimidating them and their families, or with an object of preventing them and their families from obtaining rest, relaxation and sleep; from committing any breach of the peace; from upsetting or in any other manner damaging automobiles proceeding into or out of petitioner's refinery at Reserve, Louisiana, or in its vicinity, or within the jurisdiction of this Court.

It Is Further Ordered, Adjudged, and Decreed that a writ of preliminary injunction issue herein in conformity with the above decree upon furnishing Bond in the full sum of Five Thousand $5000.00 or conditioned as the law directs.

Judgment read, rendered and signed at Edgard, Louisiana in open court this 21st day of May, 1955.

L. Robert Rivarde,
Judge.

ORAL OPINION, RENDERED MAY 21, 1955.

By the Court:

I have listened to all of this evidence in the trial of this case. Every afternoon when I left here, I would sit down and ponder the evidence offered, to see if I could discover who was right and who was wrong; on the question of Violence; because: First, if I came to the conclusion that there was violence, then I would have to render a judgment issuing a Preliminary Injunction. Secondly, if I came to the conclusion that there was no violence according to the evidence offered, then I would have to dissolve the stay order and refuse to grant the relief prayed for by the Plaintiff-Relator, in this case.

In my opinion, as a judge and as a lawyer, when an association, such as a Union is formed, for the purpose for which the Union is formed, they absolutely become a body of conspirators; because their main objective is to better their condition, and in order to better their conditions and discuss the phases that must happen when they make their demands in order to prove their conditions, they formulate their plans and they go to the heads of the organization and lay their claims and plans before them. Then if the Head of the organization cannot meet the demands of the Union, the Union begins to bargain with the Organization. Then, if they cannot reach an agreement, the Union takes a vote as to whether or not they will strike.

The moment they take that vote, it becomes what is called legally a "body of conspirators." They, among themselves, agree to do this, that, or the other thing; and that becomes, or forms a part of a "conspiracy".

Then they put out what is called their "pickets"; These pickets form what is known as a "picket line", and whether or not there is actual violence on that picket line, the acts of the pickets are the Acts of the Union; and any overt act, whether by a single individual or a group of individuals, resulting in violence or any other violation, is the act of the Union. And of course, when they "get by" with a single act, they get stronger and go further in their actions.

I don't believe these people here realize what "conspiracy" means. They don't realize what an "overt act" means. They don't realize that in the perpetration of violence, the Union might post all over the Hall, "We don't want you to lay your hand on anybody", yet if violence is committed it is the act of the Union as well as the act of the person or persons who perpetrated or inflicted

the violence. They don't realize that although the act was not pre-conceived, that although the Union has told them "We want no violence", if violence is done by one member or several members, or an injury results, or harm results, from that act, then the whole Union is as responsible as the parties who committed that act.

That, my friends, is the LAW.

Now, let us look into the matter of the "overt acts".

Mr. Walter Godchaux, Jr.'s automobile was turned over, or shoved into the ditch. It did not get there by itself, because there is no evidence before the Court that it was due to an accident.

Mr. Godchaux testified that it was caused by the act of individuals who shoved his automobile over in the ditch. And what is more, those people who shoved the automobile in the ditch, whether Union members or not, did not have the decency to find out whether the man who was their *benefactor* was injured. And I say to you, that if he had been injured and death resulted therefrom, every member of this Union could be charged; because, the acts of one, or the acts of several, are the acts of all.

Here is a man who proceeds from the Refinery and passes through the Entrance Gate. The pickets greet him cordially, and he returns their greetings. There can be a mistake about the words "Go get HIM" or "Go get IT". Mr. Godchaux said someone said "Go get HIM!" Another witness said that he said "Go get IT" and that by that he meant for the men not on duty to go get the picket signs and relieve the other men. There is a conflict as to what was said; but this fact remains:

Mr. Godchaux proceeded on his way and he was intercepted; and he tells us where and how he was intercepted, and says he and his automobile were turned over or shoved in the ditch. What stranger would do it? What reason

would a stranger have to do violence to him? Is there any reason for some stranger to do it? I certainly can see no reason. And there is nothing before this court to show that Mr. Godchaux precipitated the violence or performed an overt act that would bring it about. That, in itself, would be sufficient to justify the Court in issuing a Preliminary Injunction. But it was not only that incident.

There was the incident of Mr. Cantrelle being beaten up; and irrespective of whether the overt act is performed in the Plant itself, or performed on the highway, it makes no difference. That overt act could be committed in New Orleans and the Union Officers not be present—they could still be held responsible for it; because, as I said before, the act of one, or of several, members, is the act of the Union.

It was not necessary to beat Mr. Cantrelle up. He positively identified the men who beat him up. Those men have been proved to be members of the Union.

These members of the Union, if the District Attorney saw fit, could be placed before the Grand Jury—the District Attorney could place the matter of this beating before the Grand Jury—and the Grand Jury, if they so found, would have the right to indict them; and, if the incident had resulted in death, they could all be indicted for murder.

That is why Mr. Godchaux came into court and invoked the protection of the court. The law looks with favor upon those who seek redress at the hands of the Court. You cannot take the law into your own hands. I am advising you folks, because I believe you have been misinformed about the law.

In the City of New Orleans a few years ago—I think it was on a Christmas or New Year's Eve—the French Market Branch of a bank in New Orleans was held up and

robbed by several parties; and in the course of that robbery a policeman who had not even raised his hand, was killed and the bandits got away. They afterwards were apprehended, and a charge of murder was laid at their door and they were all indicted and found guilty—and every one of them was found guilty, even though only one of them fired the shot. Because they were all in the conspiracy, and the conspiracy had not been completed until the loot had been divided.

In the Parish of Jefferson I, sitting as judge of the District Court, had two such cases tried before me, in which that same question of conspiracy arose. Conspiracy is always present when an overt act is committed by two or more persons who have agreed or conspired to do some overt act. In that matter, I held that there was a conspiracy; and although only man killed the man that they robbed, yet the Supreme Court said the other men were equally as guilty as the man who fired the shot. And both the men who were engaged in that conspiracy were found guilty and hanged.

Later on, in another case in Jefferson Parish, two men held up a grocery, and the grocer was killed in the perpetration of the robbery, although it was understood that "no violence would be had". Yet the "conspiracy" was there; and we tried the two of them, they were both found guilty, and both were hanged.

Even though you say "There will be no shooting" or "There will be no beating", or that "There will be no hold up"—yet whatever is done in the performance of an overt act in furtherance of that conspiracy is attributable to all the conspirators; and the act of one is the act of all.

In the civil action, there is only one way to prevent those things; and that is to restrain the conspirators, or the conspiring body, from doing those things that they

should not do. As much as I would like to decide this case in your favor, I cannot do so; because I am not only protecting property of and people working for, GODCHAUX SUGARS, INC., but I am protecting you people and your property; because you yourselves could just as easily become the sufferers from these acts.

For those reasons, Mr. Hillyer, I am going to tell you gentlemen to draw up a judgment granting a Preliminary Injunction as prayed for in the petition.

And I will discuss the matter of the bond with you gentlemen in that connection after you have drawn up the judgment.

APPENDIX B.

TWENTY-NINTH JUDICIAL DISTRICT COURT

In and for the Parish of St. John the Baptist

STATE OF LOUISIANA

No: 564 Docket:

GODCHAUX SUGARS, INC.,

vs.

PRENTISS TAMPLAIN, ET AL.

/s/ HAROLD L. MONTEGUT,

Filed: August 29, 1955. *Clerk.*

MOTION FOR A NEW TRIAL.

And Now Into Court, through undersigned counsel, comes Antoine Songy, George Englad, Norbert Tassin, Jr., Barbara Falgoust, Chester Driver, Harding Farlough, James Jones, Alex Johnson, Edward Hall, Joseph Mason, Lynn Ockman, Stephen Weber and Harry Montz, defendants in the 2nd rule for contempt filed in the above cited matter June 9, 1955, and on suggesting to the court that there is error in the findings of the court casting movers in contempt, and on further suggesting to the court that said error is fundamental and is violative of due process of law as defined by the 14th Amendment of the United States Constitution, and more particularly insofar as it relates to the findings of contempt against the officers and executive committee of Local No. 1124, United Packinghouse Workers of America, CIO, who are not alleged or shown to have participated in, or ratified unlawful acts, movers respectfully request a new trial on the following grounds:

(1) An unlawful conspiracy has not been shown to

exist involving the officers and/or members of the executive board of the local union cast in contempt, and all evidence admitted relative to unlawful acts not connected with, or shown to have come from the union, or having been caused by any act of the officers or members of the executive committee, was admitted in error.

(2) According to law, and more particularly LSA-R.S. 23:842 (1950) such defendants and contemnors herein cited and found guilty solely as officers of the union and members of the union's executive committee and who were not alleged or shown as having participated in, or ratified any, unlawful acts, were wrongfully and unlawfully tried and cast in contempt in violation of due process of law as defined and set forth by Amendment 14 of the United States Constitution and Article 1, Section 2 of the Louisiana Constitution of 1921, all of which amounts to fundamental error calling for a new trial.

(3) Said findings of contempt and sentences imposed against persons admittedly not shown or considered to have participated in, or ratified, unlawful acts in violation of the injunction is in violation of the law of conspiracy and LSA-R.S. 23:842, and imposes guilt by association without proof of wrongful acts, all of which deprives movers of their liberty and property without due process of law, which findings are in error and call for a new trial.

(4) The individual defendants, Antoine Songy, George Englad, Norbert Tassin, Jr., Barbara Falgoust, Chester Driver, Harding Farlough, James Jones, Alex Johnson, Edward Hall, Joseph Mason, Lynn Ockman, Stephen Weber and Harry Montz, were convicted of contempt and sentenced to imprisonment following a trial in which no evidence was presented as to any one of them showing or tending to show, that he committed any act in violation of the injunction, that he instigated or authorized any such act, or that he subsequently ratified or adopted any such act. In fact it was never alleged, at any stage of the proceedings, that any of these individuals had committed any such act. The

theory of Godchaux Sugars, Inc., which was adopted by the Court, was that these individual defendants were guilty as co-conspirators in a conspiracy which included among its members all the individuals who, on the basis of the evidence at the trial, had committed acts prohibited by the injunction. It was there the company's contention, and the court's view, that these specific acts were committed in furtherance of the conspiracy and that therefore all co-conspirators were equally responsible. This is error, and evidence showing acts of violence not related to defendants or the Union should not have been admitted.

(5) No evidence was introduced as to the existence of any such conspiracy as charged by the company, either at the hearing held prior to the issuance of a preliminary injunction, or at the contempt trial itself. In view of this, the finding of conspiracy was error, calling for a new trial.

(6) To find individuals guilty of contempt of an injunction order where the only possible nexus between the individuals and the specific acts proved to have been committed in violation of the injunction is conspiracy, but without proving the conspiracy, amounts to a deprivation of liberty and property without due process of law in violation of the 14th Amendment to the United States Constitution, which fundamental error calls for a new trial.

Further, appellants respectfully move the court again to furnish them with a new trial according to law, and more particularly R.S. 23:842, or as therein provided, before a jury and with the right to admission to bail, and with the protection of LSA-R.S. 23:842.

/s/ Benjamin E. Smith,
Benjamin E. Smith,
411 Cigali Building,
New Orleans, La—CA 6955,
Counsel for Movers.

ORDER.

BE and it is hereby ordered that a new trial be held in the above cited and entitled matter, said trial to be held according to R.S. 23:848, before a jury according to law, after this case has been transferred to the criminal docket of this court.

Further, it is ordered that said defendants and movers herein be entitled to bail in the amount of $....., each, with good and solvent surety.

Edgard, Louisiana, this ..... day of August 1955.

.....

Judge.

ORDER.

The above and foregoing motion for a new trial was taken up instanter by consent of counsel and submitted, and accordingly it is ordered, adjudged and decreed that the said motion for a new trial be and the same is hereby overruled and a new trial refused. Rendered and signed in open court this 29th day of August, 1955.

L. ROBERT RIVARDE,

Judge.

TWENTY-NINTH JUDICIAL DISTRICT COURT

In and for the Parish of St. John the Baptist

STATE OF LOUISIANA

No. 564 1251

GODCHAUX SUGARS, INC.,

vs.

PRENTISS TAMPLAIN, ET AL.

/s/ HAROLD L. MONTEGUT,

Filed: August 29, 1955. *Clerk.*

AMENDMENT TO MOTION FOR NEW TRIAL.

Now into Court, through undersigned counsel, comes the defendants named in the foregoing motion for a new trial in the 2nd ruled for contempt filed in the above cited case on June 9, 1955, and reaffirming all and singular the grounds stated for their request for a new trial, namely paragraphs 1 through 6, inclusive, said defendants respectfully amend the said motion for a new trial by adding to said motion the following:

(7) Said defendants named in the motion for new trial are alleged to be conspirators along with other co-conspirators who are unnamed and therefore remain unknown, all of which constitutes error and deprivation of due process.

/s/ CLARENCE A. FROST,
CLARENCE A. FROST,
Reserve, Louisiana,
Attorney for Defendants.

To the Honorable the Judges of the Supreme Court of the State of Louisiana:

The petition of United Packinghouse Workers of America, Local No. 1124 (C.I.O.) through Antoine Songy, President, George Englade, Vice President, Norbert Tassin, Recording Secretary, and Antoine Songy, George Englade, and Norbert Tassin, Jr., individually, and Barbara Falgoust, Chester Driver, Harding Farlough, James Jones, Alex Johnson, Edward Hall, Joseph Mason, Lynn Ockman, Stephen Weber and Harry Montz, individually and as members of the Executive Committee of said United Packinghouse Workers of America Local No. 1124 (C.I.O.), Ruffin Montz, Dewey Weber, Sidney Williams, Robert Michel, Roland Triche, Joe Garantino, Edward Montz, Ernest Washington, Clifton Vicknair, Garland Remondet, Wilfred Stevenson, Mathew Morgan, Jr., Dennis J. Remondet, Cleveland J. Remondet, Murphy J. Louque, Oscar Entremont, and Roy Borne, with respect represent that:

I. STATEMENT OF OPERATIVE FACTS AND PROCEDURE.

1.

On June 9, 1955, Godchaux Sugars, Inc., filed a rule nisi for contempt against petitioners herein alleging that certain named individuals had committed certain specified and described acts in violation of the preliminary injunction issued in this case by the lower court May 21, 1955. Additionally, certain other petitioners were charged with contempt on the grounds that although they had not committed any known acts violating the preliminary injunction, they were guilty of contempt because they were members of the Executive Committee of The United Packinghouse Workers of America C.I.O., Local 1124. This Committee admits and is alleged to be in charge of the strike carried on by

said Local Union against Godchaux Sugars, Inc., since April 14, 1955. The trial judge found that said Local Union converted itself into a conspiracy against Godchaux Sugars, Inc., when it took an affirmative strike vote prior to the strike.[1] The members of this Executive Committee were therefore alleged to be guilty of contempt as co-conspirators, liable as a matter of law along with other members of the Union, for the actions of those shown to have committed contemptuous acts.[2]

2.

Petitioners filed exceptions to this citation among which R. S. 23:842 (1950) was cited as authority for showing that as to the Executive Committee of the Union, no right or cause of action was shown, since by the pleadings it is not set forth that those named in specific acts of alleged contempt acted under the direction, inducement, control or persuasion of said Executive Committee, nor is it set forth that said Committee or any member thereof actually or directly participated in any specific or described contempt, or ratified same after having been informed thereof.

3.

Said exceptions were overruled and petitioners required to answer, whereupon after certain delays as set forth in Application No. 42494 to this Court, a trial was held resulting in a finding of contempt August 29, 1955.

4.

Immediately thereafter, motions were filed on behalf of petitioners for a new trial and, when that was refused, for

1. See Judgment on injunction of May 21, 1955, attached.
2. See motion for citation for contempt filed below June 9, 1955, Article IV.

a suspensive appeal and release on bail. This latter motion was refused, with leave granted to apply for writs of review.

II. THIS ACTION FOR CONTEMPT INSOFAR AS IT APPLIES AND IS BROUGHT AGAINST THE MEMBERS OF THE EXECUTIVE COMMITTEE OF THE UNION AS CO-CONSPIRATORS SOLELY BECAUSE OF THEIR OFFICERSHIP, DEPRIVES THEM OF THEIR RIGHTS UNDER THE LAW OF THE STATE OF LOUISIANA, AND THE CONSTITUTION OF THE UNITED STATES.

(a) No attempt was made either in the pleadings or upon the presentation of the evidence to show that:

(1) Any of the members of the Executive Committee participated in any actions alleged or proved to be in contempt.

(2) Any of the members of the said Committee induced, persuaded, or coerced any member of the Union or person to violate the injunction.

(3) Any of the members of the said Committee ratified, either tacitly or openly any action shown to have been contemptuous after having been informed of it.

As a matter of fact, all that was shown or alleged concerning the members of the Executive Committee was that they were members thereof, and that the policy of the Union was one of non-violence.

The only *objective* evidence adduced at the trial relating to the members of the Executive Committee was that they were members of the Committee; that they were members of the Union, and that the Committee was responsible for official union activities during the strike.

(b) *Louisiana Law is clearly against a finding of contempt under such circumstances.*

LSA 23:842 states:

"No officer or member of any association or organi-

zation, and no organization or association participating or interested in a labor dispute, as these terms are herein defined, shall be held responsible or liable in any civil action, or in any criminal prosecution, for the unlawful acts of individual officers, members or agents, except upon proof by the weight of evidence and without the aid of any presumptions of law or fact, of the doings of such acts by persons who are officers, members or agents of any such association or organization and the ratification of such acts after actual knowledge thereof, by such association or organization."

Clearly, Godchaux Sugars, Inc., ignored this statute when framing the contempt citation of June 9, 1955, against the members of the Executive Committee. This disregard was deliberate. *Godchaux Sugars, Inc. believes that this law is invalid even though its validity has never been at issue or passed upon by this Court.*

Nowhere in the reported decisions of this Court including the *Gaspard*[3] and *Arkansas Oak Flooring*[4] cases has this statute either been put at issue or reported on.

This act has no relationship to the writs powers of Louisiana Courts and is identical to the original language of 29 USCA 106 found constitutional and valid.

This statute, construed as a rule of evidence by federal courts, forbids the use of secret opinion and objective reasoning when union members, and officers are charged with contempt. The United States Supreme Court has said of 29 USCA Section 106:[5]

"We need not determine whether Section 6 (29 USCA) should be called a rule of evidence or one that

3. *Douglas Public Service* v. *Gaspard*, 225 La. 974, 74 So. 2d 182 (1954).

4. *Arkansas Oak Flooring Co.* v. *United Mine Workers of America, et al.*, Nos. 41797 and 41513 (1955).

5. *Brotherhood of Carpenters & Joiners* v. *United States*, 330 U. S. 395 (1947).

changes the substantive law of agency. We hold that its purpose and effect was to relieve organizations, whether of labor or capital and members of those organizations from liability from damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration."

Further, Justice Reed in the same opinion, said:

"Before the enactment of Section 6 (29 USCA Sec. 106), when a conspiracy was established, a widely publicized case had held both the Unions and their members liable for all overt acts of their co-conspirators.[6] This liability resulted whether the members or the unions approved of the acts or not, or whether or not the acts were offenses under the criminal law. While of course participation in a conspiracy that is covered by Section 6 are not immunized from responsibility for authorized acts in furtherance of such a conspiracy, they now are protected against liability for unauthorized illegal acts of other participants in the conspiracy."

Such is the interpretation of the language of LSA R.S. 23:842 by the United States Supreme Court. For other cases upholding this language as requiring guilt to be personal in situations of this type, and discarding also notions of "collective" responsibility and "collective guilt" based on secret evaluations, see:

Cinderella Theatre, Inc. v. *Sign Writers Local Union 591* (D. C. Mich. 1934), 6 F. Supp. 184;
Donally Garment Co. v. *Dubinsky* (D. C. Mo. 1944), 35 F. Supp. 357.

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6. *Railway Employers Dept. A. F. of L.* v. *U. S.*, 200 U. S. 274. The *Danbury Hatters* Case—*Loews* v. *Lawler*, 208 U. S. 274.

The validity of this statute therefore, must be presumed until otherwise shown, and a finding by the lower court of such invalidity without written reasons assigned, even though requested, is a proper subject for review by this court.

(c) *The findings of contempt by the lower court against members of the Executive Committee deprives them of their rights under the Constitution of the United States.*

As shown by the pleadings filed by Godchaux Sugars, Inc., the evidence on the trial, and in the motion for a new trial it is clear that:

(1.) The members of the Executive Committee committed no overt act;

(2.) Such members did not authorize any such acts;

(3.) Such members did not induce or promote any such acts;

(4.) Such members did not ratify any such acts.

Various acts such as speaking the word "scab" or merely following a car, or merely "looking hard" at a replacement worker are alleged to be contemptuous. The alleged perpetrators of these acts are shown to be union members and their actions alleged to bind the executive committee even though the executive committee members are not shown to have induced or fomented these so-called "acts of contempt."

Certain other acts are alleged and shown to have been committed by persons unknown; these are then alleged, but not proved, to be the work of union members and further, actions of union members acting under a conspiracy including the executive committee. Thus not only are persons to be imprisoned and fined for acts of others not proved to be acting in concert, but persons are to be imprisoned and fined for acts by persons unknown. Presumptions and suppositions replace objective evidence, and

the judgments of courts are to be rendered on conclusions secretly and subjectively arrived at. This contempt decision, it will be noted, has no assigned reasons. This is because no known or objective foundation for it exists under it. All that is necessary for punishment to issue is for the general accusation of conspiracy to be made and unrelated disconnected evidence presented by the plaintiff.

Certainly all persons, including Judges, have their suspicions and surmises as to the sources of acts, but seldom are such found to be the foundation for legal sanctions imposed by Courts of Law.

If the due process clause of the 14th Amendment to the Constitution of the United States has any substantive meaning at all, it is that circumstances have an objective logical and public relationship to legal consequences. Even conspiracy theories cannot disregard this fundamental thesis.

Under the rulings of the lower court in this case a conspiracy is created by a vote to strike and any and all occurrences thereafter which the struck corporation designs to interpret as unfavorable to its interests in the dispute is a furtherance of the "proven" conspiracy. It becomes unnecessary to show that the leaders of the union participated in or ratified actions held to be in violation of the plaintiff companies interest as sanctified by Law and expressed in a writ of injunction. It further becomes unnecessary to show that actions were designed to violate the law. Ordinary problems concerning the struck plant and its replacement workers, traditionally calling for the use of established legal remedies, are expanded by "information and belief" that they are conspiratorial, to merit the indiscriminate use of extraordinary writs and punishments.

Without objective evidence and sound logic such corporate paranoia in labor disputes soon substitutes rule by injunction for rule by traditional and more deliberate legal means.

That these contempt convictions are under a legal form cannot disguise the fact that they are based on a lack of due process, and that logical links between the accused and the act are not present.

III. THE PETITION FOR CONTEMPT FAILS TO ALLEGE AS A MATTER OF LAW AND THE RECORD FAILS TO DISCLOSE THE NECESSARY ELEMENTS OF CONSPIRACY.

At common law the action required:

> "* * * two or more persons to conspire or combine (1) either to accomplish a criminal or unlawful purpose; or (2) to accomplish a purpose not in itself criminal or unlawful, by criminal or unlawful means * * *" Clark & Marshall, Law of Crimes (4th Ed. 1940, 167 Sec. 126).

With the two vital elements of conspiracy being an agreement or combination and an overt act in furtherance thereof, it is obvious that this finding of contempt must fall since the agreement or combination between the defendants themselves and between defendants and other members of the Union was not:

(1) For a criminal or unlawful purpose and/or
(2) To accomplish a purpose not in itself unlawful by criminal or unlawful means.

There is no evidence in the record to indicate or even show by inference that the defendants' association with the Union or its members was criminal or unlawful, or for a criminal or unlawful purpose. To the contrary, it is patent that their associations were public, open and obvious to all concerned for the purpose of legitimate union

activities, lawfully carried out, for a legal purpose, namely, the conduct of a strike, through a concerted refusal to work, and advertisement thereof, for the purpose of achieving a wage increase and more favorable conditions of employment.

From such an agreement, Godchaux Sugars, Inc., seeks to build a conspiracy; their argument being that such an agreement is either unlawful in itself, (which theory long ago vanished from our law)[7] or that such an agreement "criminal or unlawful means."[8]

To fulfill this last requirement, the Record must show that the individual defendants conspired, or agreed, or combined, to commit unlawful acts,[9] and according to Louisiana law, that one or more of the parties to the agreement or combination actually committed an overt act in furtherance of such a scheme.[10] The record does not show that either of these two requirements have been met. The allegation is that:

> "The members of the aforesaid executive committee as the duly authorized body of the Union in charge of the strike activities, which activities were carried out under their direction and control, were similarly responsible in law as co-conspirators for the illegal acts committed by the Union members, and thus acting in concert with them or under their influence, inducement or persuasion.[11]

7. *United Mine Workers of America* v. *Coronado Coal Co.*, 42 S. Ct. 570, 259 U. S. 344, 66 L. Ed. 975, 27 ALR 762 (1922); *Iron Moulders Union* v. *Allis-Chalmers*, 166 F. 45, 91 CCA 631 (1908). consisted in whole or in part to conduct the strike by

8. *Clark & Marshall, supra.*

9. *Cooper* v. *O'Connor*, 99 F. 2d 135, etc.

10. *State* v. *D'Ingianni*, (1950) 217 La. 945, 47 So. 2d 731.

11. Paragraph IV of the Citation for Contempt filed June 9, 1955.

Additionally, the allegation is that:[12]

> "* * * plaintiff is informed and believes and therefore avers that said elaborate strike organization has continued to exist and function under the direction and control of the said executive committee and its members; that the said Union and its members and the said members of its executive committee have continued to pursue as co-conspirators the conspiracy charged in plaintiff's petition herein; and that the Union and the said members of its executive committee are responsible in law for each of the acts committed or done pursuant to said conspiracy".

This is absolutely all that appears in the Record, either in the form of pleadings or direct testimony as to any so-called participation by those officers and members of the executive committee relative to any so-called conspiracy directed toward Godchaux Sugars, Inc., and the preliminary injunction issued herein. Conspiracy cannot be created out of whole cloth or thin air; it must not only be shown to exist, but, in a proceedings such as this which is quasi-criminal in nature, those alleged to be a part of said conspiracy must be demonstrated to be involved beyond a reasonable doubt. There is no attempt worthy of the name on the part of the plaintiff to show the defendants, who are members and officers of the executive committee, to be such co-conspirators. There is absolutely nothing to justify the finding of the existence of an agreement concerned with the doing of unlawful or contemptuous acts.

> "The essence of conspiracy is an agreement—together with an overt act—to do an unlawful act in an unlawful manner." *Cooper* v. *O'Connor, supra* Note 9.

The defendants herein have not been shown to have

12. Paragraph V of the Citation for Contempt filed June 9, 1955.

agreed together to do more than carry on legitimate strike activities in a legal manner for lawful objectives.

Had it been shown that the defendants had associated together to accomplish an unlawful purpose, they could be classified as conspirators and cast in contempt under the old law of conspiracy, even though they had no direct connection with the unlawful or contemptuous acts. *State* v. *Ritter*, 197 N. C. 113, 147 S. E. 733 (1929), 2 Wharton Criminal Evidence, Sec. 699 (1935).

This, however, cannot be the case because no evidence was introduced at the trial showing or tending to show the existence of an unlawful purpose in the associations proved.

Had it been shown that the defendants instructed others to commit contemptuous or unlawful acts, then the doctrine of *respondeat superior* might have been used to cast them in contempt, through a sort of vicarious liability. *Eagan* v. *U. S.*, 137 F. 2d 369, 379 (8 C. C. A. 1948); Cert. denied 320 U. S. 788 (1943).

But no such instructions or orders are reflected in the evidence. To the contrary, the testimony consistently shows a conscious effort by defendants to instruct as to legitimate and lawful conduct, all members of the Union during the strike.

Had it been shown that the strikers' duties as Union members under defendants' control during the existence of the labor dispute, were other than internal organization, welfare and picketing and that such other activities as may have been shown, if at all, were unlawful, and further, that such actions of contempt as alleged herein, grow out of such activities, then liability on the part of defendants could be shown on a theory similar to the so-called "Felony murder" charge; but such was not shown to be the case here. Strikers were not shown or alleged to be

under orders of defendants as union officials except when on activities admitted by the company to be legitimate, *i. e.*, internal organization, welfare, and picketing. Activities complained of where specific union members were named are not alleged to have been at the orders of the defendants. Activities complained of as contemptuous where no union members are named are alleged, (but not shown) to have a connection to the Union and thereby to the defendants only through the most impossible of legal gymnastics. Thus assumptions are to replace proof, and guess-work substituted for evidence. Conspiracy is alleged without being proved.

The danger inherent with the use of conspiracy statutes and conspiracy theories is that the traditional legal concept of individual guilt and personal responsibility is placed in jeopardy. From this starting point, it is clear that any use of the term "conspiracy" must be severely restricted and its definition follow rigid and accepted patterns, for when conspiracy is found without being based on traditional concepts, and without the basic elements being proved conclusively, all that remains is the undemocratic element of guilt by association. It is plain that what the plaintiff and mover for contempt has done in this case has been to remove the elements of personal guilt, individual responsibility and objective proof from its corporate mind, and has attempted to substitute in its place, alien and autocratic concepts of collective guilt, collective responsibility, and guilt by association. From this point forward, the plaintiff's case had no objective meaning, subjective evaluations, and personal (and of necessity, secret) judgments were required in place of objective evidence if plaintiff's case in favor of contempt was to succeed. Even the old law of conspiracy does not go

this far. It still required that objective evidence be offered of an agreement to commit unlawful (or contemptuous) acts,[13] and that if such agreement or conspiracy is

> "* * * Dependent upon circumstantial evidence, the inference of * * * conspiracy must be reasonable, probable, and restrained".[14]

What is being attempted here is for the defendants to be deprived of their liberty and property upon the following spurious reasoning:

Example I.

(1) X is a member of the union;
(2) Y is an officer of the union;
(3) X commits an unlawful or contemptuous act;
(4) Y is guilty of contempt.

or

Example II.

(1) An unlawful act is committed by persons unknown;
(2) A is informed and believes, and therefore avers without further proof that said unlawful act was committed by persons unknown but believed to be acting in concert with Y to damage A;
(3) Y, again is guilty of contempt.

These are short-cuts in the law which do no more than bring the law into disrepute and disfigure the foundation of free government.

Finally, when all of the sophistry and pseudologic of the plaintiff's case has been exposed and discarded onto the rubbish-heap of illegality and constitutional subversion, all that is left to accuse the defendants of is that they are associated with the union, certain members of which are alleged to have committed contemptuous and/or illegal acts. Even the Congress has not gone so far as to legis-

13. *Cooper* v. *O'Connor, Supra* Note 9.
14. *U. S.* v. *Pan American Pet. Corp.*, 6 F. 2d 43 (1925).

late mere membership or association a crime. Certainly the Supreme Court has not considered it sufficient to require imposition of sanctions quasi-criminal in nature.[15] The danger of drawing broad inferences leading to guilt from mere circumstances of association is clearly pointed out by Justice Frankfurter in the case of *Vea Molthe* v. *Gillde*s, 332 U. S. 708 (1948). The individual defendant's participation in, or knowledge of, the conspiracy and thereby his guilt may not be inferred from his casual or unexplained meetings with others shown to be guilty.[16] Plaintiff cannot be relieved from clearly establishing the participation in a conspiracy.[17]

IV. THE ACTION BY THE LOWER COURT IN FINDING THE MEMBERS OF THE EXECUTIVE COMMITTEE IN CONTEMPT WITHOUT ALLEGATION OR PROOF OF DIRECT PARTICIPATION IN OR RATIFICATION OF CONTEMPTUOUS ACTS HAS PREEMPTED FEDERAL LAW BY EFFECTIVELY FORBIDDING TO THE LOCAL UNION THE RIGHT TO STRIKE PROTECTED BY THE NATIONAL LABOR RELATIONS ACT AS AMENDED.

If A is an officer of a labor union charged along with other officers with the responsibility and duty of conducting the legitimate affairs of the union including the conduct of a legal strike (if such is found to be necessary to enforce legitimate union demands) and A is then threatened with fine and imprisonment, if, during the conduct of that strike a known member of the union, or a person unknown, commits an unauthorized act alleged and/or presumed to be in violation of law, then A in all probability will be inhibited not to exercise his responsibilities to the union and to not only refrain from legitimate

15. *Schneiderman* v. *U. S.*, 320 U. S. 118 (1943).

16. *U. S.* v. *Falcone*, 311 U. S. 205, (1940); *Ellis* v. *U. S.*, 138 F. 2d 612 (1943).

17. *The conspiracy dilemma*, 62 Harv. L. Rev. 276 (1948).

strike activity, himself as a union member, but to discourage other union members from their exercise of this right.

If every strike vote is a conspiracy (as the lower court has held in this case) and every union member and/or officer is a co-conspirator liable for the unauthorized and unratified acts of persons known and unknown then the right to strike becomes a mockery, and is no longer available to employees as a method of enforcing demands on employers.

The right to strike is a fundamental guarantee of Federal law (28 U. S. C. A. 157), and to be effectively deprived of it is unlawful. Certain strike activities and certain type strikes are limited or even prohibited,[18] but the fundamental right to call for and conduct a strike is guaranteed.

The decision by the lower court holding the members of the Executive Committee liable under contempt to imprisonment and fines is a preemption of federal law and should be reviewed by this court so as to be held invalid.

V. THESE SENTENCES AND CONVICTIONS FOR CONTEMPT SHOULD BE REVIEWED AND SET ASIDE BECAUSE NOT HELD BEFORE A JURY AS REQUESTED BY CONTEMORS, ALL OF WHICH WAS IN VIOLATION OF THE LOUISIANA LITTLE NORRIS-LA-GUARDIA ACT (R. S. 23:821 et seq.) AND MORE PARTICULARLY SEC. 848 THEREOF.

1.

This statute is found unconstitutional by the trial judge presumably on the basis of *Douglas Public Corporation* v. *Gaspard, supra,* and *Arkansas Oak Flooring Co.* v. *United Mine Workers of America, supra,* decided 4/25/55 by this Court. This decision is erroneous and absolutely contrary

18. 28 USC 151-168, National Labor Relations Act, as amended.

to law, the issues in those cases were whether or not the inhibitions placed on Louisiana constitutional courts by R. S. 23:844 were valid under the powers granted said courts by Louisiana Constitution (1921) Art. 1, Sections 2, 6, 7, Sec. 2, 35. In the above cases only and particularly R. S. 23:844 was held unconstitutional insofar (as this court held) it attempted to limit the powers of a district court to issue writs "in aid of its jurisdiction" (La. Const. (1921) Art. 7, Sec. 2). *All other sections of this act (203 of 1934) were not at issue in those cases and hence not passed upon, while defendants here have specifically put at issue in their pleadings in this matter the validity of other sections.* Particularly those sections relative to contempt. (R. S. 23:848—relative to trial by jury in contempt proceedings, and R. S. 23:849—relative to sentence for contempt.)

2.

The invalidity of R. S. 23:844 cannot affect or prejudice R. S. 23:848 or 849, especially when those sections have no bearing whatsoever on the constitutional questions decided in the *Gaspard* and *Arkansas Oak Flooring* cases which did not concern them.

(a) The original act (203 of 1934) unchanged and free of amendment since it was passed, is not altered by the Revised Statutes version of 1950 since such revision was not a re-enactment and not an amendment, and the original act prevails. *U. S.* v. *Dauphin,* C. C. 1884, 20 F. 625. Hence, it follows that the reference in R. S. 23:848 limiting trial by jury for contempts alleged to arise from violations of temporary restraining orders issued "under this part" is subordinate to the language of Section 10 of Act 203 of 1934 requiring such a trial for all alleged violations of such orders issued by a "Court".

(b) *The original act (203 of 1934) contains a sep-*

arability or severability clause (Sec. 13) which prevents the holding of one section of said act invalid to affect other sections. It can be clearly seen that logically, the invalidity of R. S. 23:844 cannot affect R. S. 23:848, or 849 which were connected to R. S. 23:844 only for historical reasons.

(c) *R. S. 23:848 and 849 are constitutionally authorized and created.* Article 19, Section 17 of the Louisiana Constitution of 1921 specifically provides:

> "Section 17. The power of the courts to punish for contempt shall be limited by law."

To hold *"per curiam"* as this Court did in *Godchaux Sugars, Inc.* v. *Prentice Tamplain, et al.,* Nos. 42,465 and 42,494 that in effect these provisions of law authorized by the Constitution are invalid would be to take the *Gaspard* and following decisions to absurd lengths and deny to the Louisiana Bar a full understanding of the constitutional questions raised by the existence of these enactments. Such a holding would undermine and place in doubt all legislative enactments on contempt where the injunction statute allegedly violated is other than R. S. 13:4069 and subject to the same attack as in the *Gaspard* case. This would carry further the process initiated by the *Gaspard* decision of declaring invalid a considerable body of Louisiana law. Following the *Gaspard* decision and the *Godchaux* v. *Tamplain per curiam,* literally, it can be said:

> (1) Louisiana District and Appellate Courts can issue any writ whatsoever without limit and without regard to due process, notice and hearings, regardless of procedural requirements by the legislature, and
>
> (2) The power of Louisiana Courts to punish for contempt is unlimited.

Surely such cannot be the case under the regime and sovereignty of the United States Constitution (Amdts. V

and XIV), and the 1921 La. Constitution (Art. 19, Section 17).

3.

Applicants contend therefore:

(a) That their trial, conviction and sentences for contempt were invalid because not carried out according to law and due process, and that:

(1) The 29th Judicial District Court should be prohibited from ordering the execution of said sentences.

(2) Said convictions should be set aside and a new trial had according to law, and more particularly R. S. 23:848, and that additionally and/or in the alternative;

(3) Said sentences should be reviewed and after review set aside, nullified and voided as being contrary to and in excess of R. S. 23:849.

VI.

As to paragraph VI (20) of plaintiff's petition, the defendants therein named show that there is a want of interest in plaintiff since the person therein named as suffering from violation of the injunction is a local merchant who was not covered by the preliminary injunction. Petitioners further show that under the injunction issued in these proceedings, local merchants who are not employees of plaintiff corporation are not included under the said injunction. Plaintiff's allegation shows, at most, a barroom fight between a person who was not a party to the injunction proceedings and several Union members and no evidence was introduced by plaintiff to show any connection with the injunction. The criminal laws of the State of Louisiana adequately protect persons not employed by Godchaux Sugars from harm and the defendants herein have been charged under the said laws.

To allow plaintiff to include in their petition every incident in which a Union member is involved in an infraction of the criminal laws when such incidents bear no relation to the injunction issued, or involve any of plaintiff's officers, agents or employees, would force Union members to undergo the burden of two separate trials, one for contempt of the injunction, and one under the criminal laws of the State.

Under this procedure, it is evident that Union members would first be forced to trial for contempt without the proper safeguards normally afforded them by the criminal laws. Examples of loss to defendants of the protection afforded by the criminal laws are: defendants can be forced to take the witness stand under cross-examination; the burden of proof required in criminal proceedings differs from that required in contempt proceedings. Yet, having been tried for contempt, a defendant will then stand trial for criminal charges in which trial, with proper protection, the result may differ from the contempt hearing. Defendants named in Paragraph VI (20) have thus been prejudiced in their right to a fair and impartial trial having been included in the rule for contempt in a matter with which plaintiff has no connection.

2.

Petitioners show that the following errors are contained in the judgment rendered by the Court in the contempt hearing.

(a) As to the defendants whose sentences are suspended (see paragraphs 2 and 3 of judgment), the said suspended sentences in substance and effect constitutes a probationary period. Under the laws of the State of Louisiana a period of probation cannot exceed the time of the sentence imposed Code of Criminal Procedure L. S. A. R. S. 15:530.

Paragraphs 2 and 3 of the judgment states in substance, that the sentences of imprisonment set forth are to be suspended so long as there is no further violation of the preliminary injunction. There is no indication that the preliminary injunction will be dissolved prior to the time specified for imprisonment. Therefore, it is conceivable that the sentences could remain suspended for an indefinite period which would exceed the 60-day period contained in Paragraphs 2 and 3.

(b) Petitioners further show that under the laws of the State of Louisiana, a determinate sentence is required. Code of Criminal Procedure L. S. A.—R. S. 15:529. The suspended sentence imposed by Paragraphs 2 and 3 of the judgment on the rule for contempt is not determinate in that it is dependent upon the preliminary injunction which will be in effect for an indeterminate period of time. Thus the suspended sentence can remain in effect for six months, a year, or as long as the preliminary injunction remains in effect.

(c) Petitioners further show that the punishment imposed by the judgment is cruel and unusual and therefore in violation of the Louisiana Constitution of 1921, Article 1, Section 12, and the United States Constitution, Eighth Amendment. The sentence imposed is cruel and unusual in the following respects:

> According to the trial judge's interpretation of conspiracy, the mere taking of a strike vote by the Union to which the defendants belong was sufficient to justify a finding of conspiracy. The term "concert" as used in the injunction includes a conspiracy. Therefore, that part of the sentence which reads "that the sentences of imprisonment and of payment of the fines above set forth, shall be suspended as to each such person so long as there is no further violation of the preliminary injunction issued herein on May 21, 1955, by such person or persons acting in concert with him,

or under his influence, persuasion or inducement", would make the suspended sentence dependent upon *any* violation of the injunction even though the defendants had not actually conspired to commit such violation.

(d) Petitioners further show that the conditions upon which the suspended sentence depends, namely, that there will be no further violation of the preliminary injunction issued on May 21, 1955, places an unreasonable burden on defendants since *any* violation will be sufficient to make the sentence of imprisonment effective even though the defendants have no knowledge of the violation. That part of the judgment relating to suspended sentences does not even require conspiracy or any connection with violations of the injunction order in order to effect imprisonment, and would thus subject defendants to imprisonment for violations of the injunction in which they had not participated or which they do not even have knowledge. The judgment thus shows a pre-judgment of defendants as being in contempt of court for any violation of the injunction even though defendants would not have participated in the said violations. Since violations of the injunction can be punished by imprisonment, defendants would thus find themselves deprived of liberty without due process of law.

As to paragraph 3 of the injunction, the defendants therein sentenced to imprisonment which imprisonment is suspended upon payment of a fine and to remain so suspended only upon there being no further violations of the preliminary injunction, petitioners therein named show that they hold no office or position of leadership in the Union and thus have no control over the activities of the members. The total effect of the sentence as to these

defendants in paragraph 3 in the light of the trial judge's interpretation of conspiracy is to penalize these defendants for merely being members of a labor Union.

Petitioners and applicants attach hereto certified copies of the following documents for reference by the Court in its consideration of this application:

(1) Copy of the motion and citation for contempt filed by plaintiff, Godchaux Sugars, Inc., June 9, 1955.

(2) Exceptions filed by defendants below and applicants and petitioners herein June 15, 1955.

(3) Answer filed by defendants below and petitioners and applicants herein June 15, 1955.

(4) Judgment on rule for contempt rendered August 29, 1955.

(5) Motion for suspensive appeal and release on bail filed August 29, 1955.

(6) Motion for a new trial filed August 29, 1955.

WHEREFORE, petitioners and applicants pray that:

(1) A writ of prohibition issue herein directed to the Judge of the 29th Judicial District Court, Parish of St. John the Baptist, forbidding enforcement of the judgment of contempt rendered below August 29, 1955;

(2) A writ of certiorari issue herein likewise ordering said Judge to certify and send up to this Court for review the entire record of this case for consideration by this Court, including the transcript of testimony.

(3) A writ of mandamus issue herein ordering the said judge to dismiss said motion and citation for contempt filed by the plaintiff, Godchaux Sugars, Inc., insofar as same relates to the officers and Executive Committee members of the United Packing House Workers of America, Local 1124, C. I. O., and further ordering the remaining defendants named in said motion and citation for contempt

and their cases be transferred to the criminal docket of said court to be tried before a Jury under the provisions of R. S. 23:848, and under the restrictions of R. S. 23:849.

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52/30

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 649

ANTOINE SONGY, GEORGE ENGLAD, NORBERT TASSIN, JR., CHESTER DRIVER, HARDING FARLOUGH, JAMES JONES, ALEX JOHNSON, EDWARD HALL, JOSEPH MASON, LYNN OCKMAN, STEPHEN WEBER, HARRY MONTZ, and LOCAL NO. 1124, UNITED PACKINGHOUSE WORKERS OF AMERICA,

Petitioners,

versus

GODCHAUX SUGARS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Twenty-Ninth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana.

BRIEF FOR RESPONDENT IN OPPOSITION.

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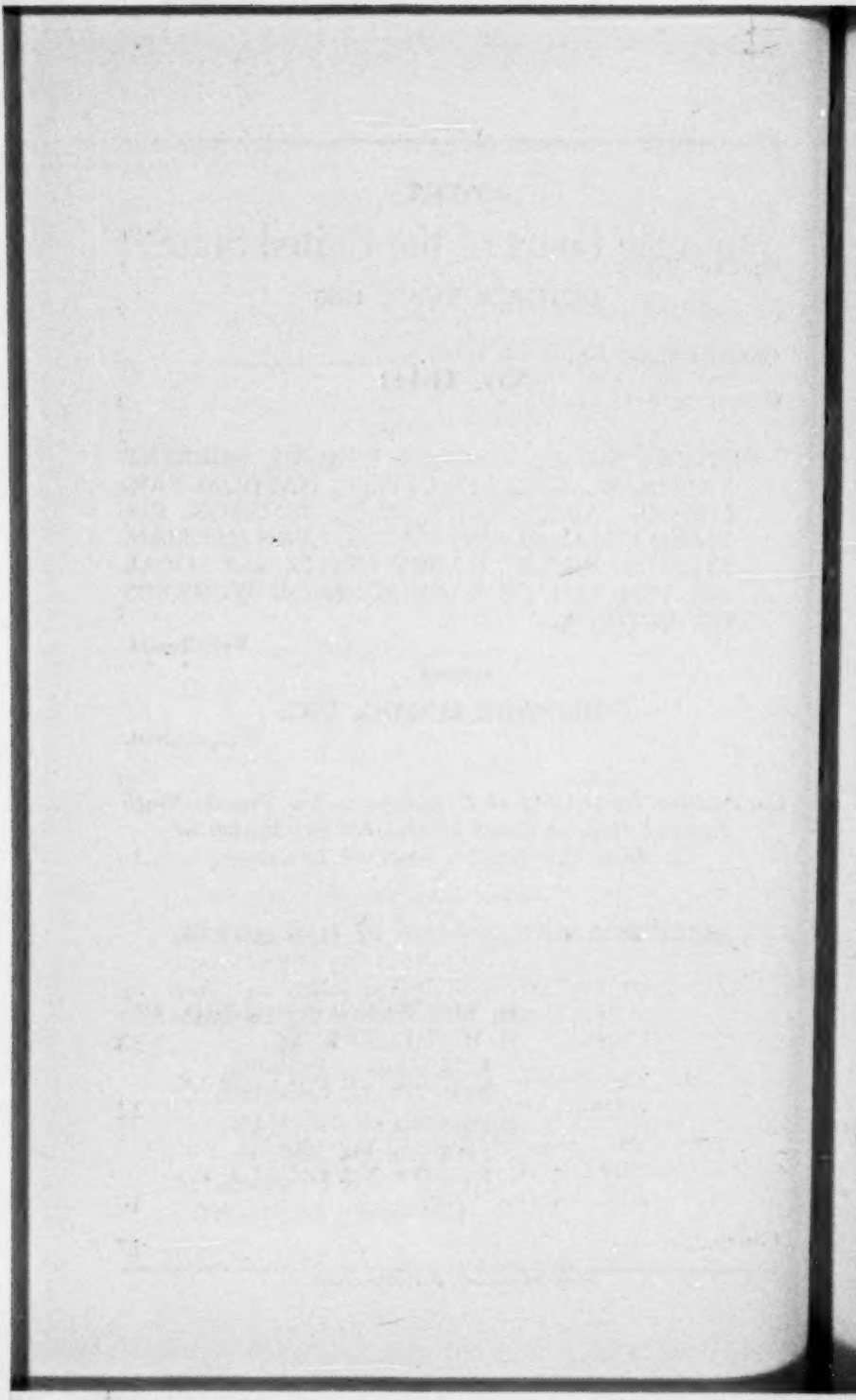

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IN THE

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No. 649

ANTOINE SONGY, GEORGE ENGLAD, NORBERT TASSIN, JR., CHESTER DRIVER, HARDING FARLOUGH, JAMES JONES, ALEX JOHNSON, EDWARD HALL, JOSEPH MASON, LYNN OCKMAN, STEPHEN WEBER, HARRY MONTZ, and LOCAL NO. 1124, UNITED PACKINGHOUSE WORKERS OF AMERICA,

Petitioners,

versus

GODCHAUX SUGARS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Twenty-Ninth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINION BELOW

Review by certiorari is sought herein as to an unreported decree of a state trial court holding petitioners

in contempt for violation of a preliminary injunction.[1] While no opinion was handed down by the trial court at time of rendition of judgment, the reasons for such judgment are given by the court in a pleading to the Louisiana Supreme Court.[2] A copy of such pleading is annexed to this brief as Appendix 1.

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3), without further specification in the jurisdictional statement.[3]

Respondent submits, however, that this Court lacks jurisdiction for the following reasons:

1. The federal question sought to be raised in the petition as to the fine imposed upon the petitioning union was not raised in the state courts.

2. The question sought to be raised in the petition as to the suspended fines and sentences imposed upon all other petitioners is moot since the period of suspension has expired and no sanction may now be imposed upon such petitioners under the contempt decree.

3. The petition does not present a substantial federal question because the only question asserted is an alleged violation of due process resulting from the supposed application by the trial court of an untenable legal theory, although the face of the record discloses that no such theory was advanced or applied.

---

[1] Tr. Vol. 1, p. 296, *et seq.* References to the Transcript of Record herein are made by first referring to the volume and then to the page of the volume. References to testimony of witnesses are made by referring to the original page number within Volume 2 or Volume 3 upon which the testimony appears, rather than to the cumulatively re-numbered pages of the transcript.

[2] Tr. Vol. 4, p. 373.

[3] Petition, p. 2.

CONSTITUTIONAL PROVISION INVOLVED

Respondent submits that no substantial question as to any federal constitutional provision is involved herein.

QUESTIONS PRESENTED

1. Whether this Court lacks jurisdiction (a) by reason of the failure of the petitioning union to raise in the state courts the question which it here seeks to raise as to the fine imposed upon it, and (b) by reason of the fact that the case is now moot as to all other petitioners because the sentences and fines imposed upon them were suspended and they are now subject to no legal sanction resulting therefrom, the period of suspension having expired and the injunction itself having been dismissed, without prejudice, by joint motion?

2. Whether this Court lacks jurisdiction by reason of the failure of the petition to present a substantial federal question, where the only question presented is a claim of violation of due process based upon the supposed application by the trial court of untenable rules of law, and the record on its face reflects that no untenable law was applied?

3. Assuming this Court has jurisdiction, whether it should grant certiorari when (a) no federal question of substance not heretofore determined by this Court, or in conflict with applicable decisions of this Court, was decided by the state court, (b) the decision below was of limited and local importance only, and (c) the decision below was plainly correct, and, even if erroneous, does not reflect a lack of due process?

STATEMENT OF THE CASE

A.

STATE COURT PROCEEDINGS

Respondent, on June 9, 1955, filed a rule for contempt [4] against (a) Local #1124, United Packinghouse Workers of America, (b) the individual members of the union's "strike committee", and (c) certain individual union members who had personally committed various offenses. In brief, the basis of the contempt charge was that, in violation of the specific terms of a preliminary injunction rendered on May 21, 1955, the union, its "strike committee", and various union members, had continued in a pre-existing conspiracy to use violent and unlawful means to prevent respondent's employees from working and that numerous contemptuous acts had been committed by members of the conspiracy in furtherance of its purposes. The union and the members of the "strike committee" were shown to have managed and controlled the illegal conspiracy for the benefit of the union and hence were charged as being legally responsible for the acts of individual members of the conspiracy.

After a lengthy trial, exhaustive briefing, and oral argument, the trial court found the union, the members of its "strike committee", and various individual union members guilty of contempt.[5] A motion for a new trial, in which the movers attempted to raise the issue of a denial of "due process", was filed by the members of the "strike committee", but not joined in by the union or by the other persons adjudged guilty of contempt.[6] By consent of counsel the motion was tried *instanter* and was denied. All defendants in rule, including some who had

[4] Tr. Vol. 1, p. 207, *et seq.*
[5] Tr. Vol. 1, p. 296, *et seq.*
[6] Tr. Vol. 1, p. 299, *et seq.*
[7] *Id.*

not been found guilty, then filed an application for supervisory writs to the Supreme Court of Louisiana in which the issue of "due process" was again sought to be raised as to the conviction of the "strike committee" members, but not as to any of the others found guilty of contempt.[8] In response to the application for writs, and because of the erroneous statements contained therein (similar, in part, to those made by petitioners here) as to the basis for and effect of the contempt decree, the trial judge filed with the State Supreme Court an explanation of his ruling, which, under the State practice, is denominated as an "opposition", and a copy of which is attached to this brief as Appendix 1.[9] Respondent also filed an opposition.[10] The State Supreme Court found no error in the ruling, and refused to grant writs.[11]

B.

PRESENT STATUS OF THE PROCEEDINGS

The present petitioners are the union and the "strike committee", the other individuals found guilty of contempt seek no relief here. The petition herein, for the first time in the entire course of the proceedings, attempts to raise the "due process" issue as to the fine imposed upon the union. The petition also attempts to raise again the claim of denial of "due process" as to the suspended sentences and suspended fines imposed upon the members of the "strike committee". The period of suspension being co-extensive[12] with the 60-day period of

[8] Tr. Vol. 4, p. 1, *et seq.*
[9] Tr. Vol. 4, p. 373, *et seq.*
[10] Tr. Vol. 4, p. 355, *et seq.*
[11] Tr. Vol. 4, p. 379.
[12] Before the Louisiana Supreme Court, petitioners professed to urge that the period of suspension was indefinite. However, the trial court removed any doubt as to this issue by stating to the Supreme Court of Louisiana that " * * * the period of suspension expires when the term of the sentence expires". See Appendix 1, this brief p. 23.

the sentences, such petitioners are, by lapse of time, no longer subject to any possible jeopardy resulting from the contempt decree.[13] The injunction proceeding itself was dismissed, without prejudice, upon joint motion of counsel, by order dated December 21, 1955, a copy of said motion and order being annexed as Appendix 2 to this brief.

C.

THE PETITION FOR CERTIORARI

The petition herein, in essence, is an attempt to convince this Court that due process was denied to petitioners because the trial court, petitioner's claim, applied untenable rules of law in determining that an illegal conspiracy existed and in determining that petitioners were legally responsible for the contemptuous acts disclosed by the evidence. Petitioners contend that the contempt convictions rested on the supposed determination of the trial court that the strike vote created an illegal conspiracy.[14] Petitioners also contend that the contempt convictions resulted from the supposed application of a principle of "virtual absolute vicarious liability" to the union and the strike committee for the actions of union members.[15]

To support their claim that untenable theories of the law of conspiracy were applied by the trial court in the contempt case, petitioners have taken the oral remarks of the court, made some four months previously in the injunction case, and have sought to attribute to their bare language, taken out of context with the argument,

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[13] The sentences were imposed August 29, 1955. A new trial was denied on the same date. No stay of execution was granted. Therefore, the period of the sentences and the period of suspension expired on October 29, 1955.

[14] Petition, p. 14.

[15] Petition, p. 17.

meanings not intended. Respondent did not at any time plead or otherwise urge to the court that merely voting to strike resulted in an **illegal** conspiracy. As the trial court later stated,[16] the illegality of the conspiracy consisted in the plan of the union and of the strike organization within the union to use illegal means—force and violence—to install such fear in respondent's employees as to cause them to cease work. Nor did respondent at any time urge that the union and the committee members were in contempt solely because union members had committed contemptuous acts. Respondent's contention, which the trial court upheld, was that, an illegal combination having been established, and proof of its continuation after the injunction adduced, petitioners, who admittedly managed the combination, were legally responsible for the acts of their co-conspirators pursuant to the conspiracy. All of this is clearly demonstrated by the trial court in Appendix 1.

A glance through the record will disclose that there was ample evidence of the existence of an illegal conspiracy and of petitioners' complicity therein. We do not consider it necessary or appropriate to discuss the details of the evidence here. Suffice it to say that petitioners' own witnesses testified to all the necessary elements of a bare combination or "conspiracy"—that a special group had been set up within the union,[17] under the command of the "strike comimttee",[18] with the primary purpose of keeping respondent's employees from working.[19] It is obvious from the testimony, when compared with the circumstances of the case, that it was

[16] Appendix 1, this brief, p. 22.

[17] See, *e.g.*, Tr. Vol. 2, pp. 354-358; Vol. 3, pp. 664, 703-704.

[18] See, *e.g.*, Tr. Vol. 2, pp. 357-358, 384.

[19] *Cf.* Tr. Vol. 3, pp. 710-711, 727-728, 737, 745-746, 763, 788, 836. See also, Vol. 2, pp. 44, 481.

planned to accomplish the object of the combination by intimidating respondent's employees.[20] And, in spite of the pious protestations of petitioners that the policy of the union was against violence, the great mass of circumstantial evidence, taken in the light of all the testimony, was so imposing as to make it conclusive that violence must have been planned as the means of producing the desired "psychological effect".[21] In this connection, it is worthy of note that the organized violence commenced against foremen and clerical employees shortly after the strike started and long before any attempt to operate the plant was made;[22] that it grew to tremendous proportions until the injunction suit against the union and its officers was filed;[23] that it ceased during the pendency of the injunction hearing[24] while petitioners still hoped for success therein; that it promptly commenced anew when the injunction issued[25] and was not abated by contempt action against individual conspirators[26] and that almost as soon as petitioners were charged with responsibility for contemptuous acts, and for the first time realized that they were in personal or financial jeopardy, the organized violence ceased altogether.[27]

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[20] The court below so found. See Appendix 1, this brief, pp. 20, 21. In addition to the circumstantial evidence of such purpose, petitioners' own counsel elicited testimony to such effect from respondent's witnesses. Tr. Vol. 2, pp. 85-87; 308-310.

[21] See Appendix 1, this brief, pp. 20, 21, 22; and *cf.* Tr. Vol. 2, pp. 360-362, 434-435; Vol. 3, p. 654.

[22] *Cf.* Tr. Vol. 2, pp. 71-72, 74, 88.

[23] See, generally, Tr. Vol. 2.

[24] Tr. Vol. 2., p. 88.

[25] See, generally, Tr. Vol. 3.

[26] See motion for citation for contempt filed May 23, 1955, Tr. Vol. 1, pp. 145 *et seq.*; and *cf.*, generally, Tr. Vol. 3.

[27] *Cf.* Appendix 1, this brief, p. 21.

ARGUMENT

I

THE COURT LACKS JURISDICTION BECAUSE

(a) NO FEDERAL QUESTION WAS RAISED BY THE UNION IN THE STATE COURT AND

(b) THE MATTER IS MOOT AS TO ALL OTHER PETITIONERS.

(a) The petition for certiorari attempts to raise the question of whether the imposition of a fine for contempt of court upon the union amounted to an unconstitutional denial of due process. This issue as to the union was not raised by the motion for new trial,[28] or in the application for writs to the Louisiana Supreme Court.[29] The union was not even a moving party in the motion for a new trial.

This Court lacks jurisdiction to review a state court decision where the asserted federal question could have been, but was not raised in the state courts.[30] It is too late for a party to raise such question in this Court, even though the party joins in the petition with another party who did raise the question in the state courts; the party must show that he has himself raised in the state court the question which he argues here.[31]

(b) The sentences of fine and imprisonment imposed upon all other petitioners were suspended on condition that there be no further violations of the injunction by

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[28] Tr. Vol. 1, pp. 299, 301.
[29] Tr. Vol. 4, pp. 1 *et seq.*
[30] *White River Lumber Co. v. Arkansas, ex rel. Applegate*, 279 U.S. 692, 700; *Whitney v. California*, 274 U.S. 357, 362-363.
[31] *Puget Sound Power & Light Co. v. King County*, 264 U.S. 22, 25; *Sully v. American National Bank*, 178 U.S. 289, 297.

such persons.[32] The period of suspension and that of the sentences were co-extensive.[33] The period of the sentences —sixty days—has long since expired. The injunction itself has been dismissed by joint motion of counsel.[34] Accordingly, these petitioners are now subject to no legal sanction resulting from their conviction, and there is nothing upon which the decree of this Court might operate.

The case is moot as to the question sought to be raised by these petitioners, and this Court lacks jurisdiction.[35]

II.

THE COURT LACKS JURISDICTION BECAUSE NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

The sole assertion of the existence of a federal question herein is that the judgment of contempt was rendered without due process, contrary to the 14th Amendment. The contention of lack of due process appears to be based upon a claim (a) that the trial court had an erroneous understanding of the law of conspiracy, which it had expressed in ruling from the bench on the preliminary injunction on May 21, 1955, and had perpetuated such error in ruling on the contempt on August 29, 1955; and (b) that, because of the allegedly erroneous finding of conspiracy, the contempt decree of August 29, 1955, was itself in error in imposing vicarious responsibility upon petitioners.[36]

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[32] Tr. Vol. 1, pp. 296, *et seq.*
[33] Appendix 1, this brief, p. 23.
[34] Appendix 2, this brief, pp. 25, 26.
[35] *Cf. St. Pierre v. United States*, 319 U.S. 41, 42; *Ex Parte Baez*, 177 U.S. 378, 389.
[36] *Cf.* Petition, pp. 14-17. The last paragraph on page 14 appears to be a summation of petitioners' underlying contention.

There is and can be no claim that petitioners were not accorded due process as to notice, hearing, and all other procedural matters. The law upon which the contempt judgment rested was clearly expressed by the trial court before the Supreme Court of Louisiana.[37] Such expression dispels the claim that the contempt judgment was based upon any theory that merely voting to strike created an **illegal** combination. The rules of law applied by the trial court were that a conspiracy to attain a certain end by the use of force and violence was unlawful, and that a member of a conspiracy may be held responsible for the acts of his co-conspirators pursuant to and in furtherance of the conspiracy. There can be no serious contention that such rules of law are so untenable as to amount to lack of due process.[38]

There can be no serious contention that in this voluminous record there is **no** evidence from which the existence and nature of the conspiracy could be concluded by the trial court. There can be no serious contention that consideration of circumstantial evidence to determine the illegal conspiracy results in a deprivation without due process,[39] nor that consideration by the trial court of the credibility of the petitioners had any such effect.[40]

Thus, on the face of the record herein, the only real question that petitioners can raise is whether the weight of the evidence established that an illegal conspiracy

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[37] Appendix 1, this brief, p. 20. Clearly, the trial court is the best judge of the question of what law was applied by it in rendering its decree.

[38] These are the rules which prevailed at common law, and which prevail to-day unless changed by statute. *Cf.* 11 *Am. Jur.* 543, "Conspiracy", §§ 2, 3; *id.*, p. 548, § 8; *id.*, p. 577-578, § 45.

[39] "It is elementary, however, that conspiracies are seldom capable of proof by direct testimony, and may be inferred from the things actually done * * * " *Eastern States Retail Lumber Dealers Association v. United States*, 234 U.S. 600, 612.

[40] "Credibility is for the trier of facts." *Hawk v. Olson*, 326 U.S. 271, 279.

existed. Such a question does not present an issue of violation of "due process", or even raise a constitutional question.[41] Hence, no substantial federal question has been or is now raised.

III.

CERTIORARI SHOULD NOT BE GRANTED BECAUSE:

A. *NO FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT, OR IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, WAS DECIDED BY THE STATE COURT.*

B. *THE DECISION IS OF LIMITED AND LOCAL IMPORTANCE ONLY.*

C. *THE DECISION WAS PLAINLY RIGHT: BUT, RIGHT OR WRONG, DOES NOT REFLECT A VIOLATION OF DUE PROCESS.*

INTRODUCTION

This is just another case in which litigants, unsuccessful before two state courts, have fastened upon the "due process" clause of the 14th Amendment as the only available vehicle for further review. The decree of the trial court decided only the guilt of petitioners under the particular facts involved. No novel or unsettled legal principle was determinative. No one is now in jeopardy of liberty as a result of the decision, and the only property now involved—the $1,000.00 fine against the union

[41] *Whitney v. California*, 274 U.S. 357, 367. *Cf. Corrigan v. Buckley*, 271 U.S. 323, 331-2; *In re Converse*, 137 U.S. 624, 631.

—was of so little importance to the union that it did not join in the motion for new trial or attempt to raise the due process issue as to such fine in the state courts.

A.

NO FEDERAL QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THIS COURT, OR IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, WAS DECIDED BY THE STATE COURTS.

Petitioners attempt to build a case for denial of due process upon their assertion that the Louisiana court has adopted a "doctrine that organizations of workers using economic pressures to improve their wages and working conditions are conspiracies".[42] Of course, in a non-technical sense, such associations are "combinations" or "conspiracies"—but neither the trial court in this case,[43] nor the state Supreme Court[44] in other cases, has held that a mere strike vote constitutes an **illegal** combination. A combination among persons—whether they be members of a labor union, members of a board of directors, or members of the public at large—to achieve an end otherwise lawful by unlawful means constitutes an unlawful conspiracy, and a decision to such effect decides nothing not heretofore determined by this Court.[45] Further, a decision that a conspirator is liable for the acts of his co-conspirators pursuant to and in furtherance of the conspiracy is not at variance with this Court's decisions.[46] There is no question here of statutory restriction on the

[42] Petition, p. 15.
[43] See Appendix 1, this brief, p. 22.
[44] *Cf., e.g., Douglas Public Service Corp. v. Gaspard*, 225 La. 972, 74 So. (2d) 182.
[45] See, *e.g., Truax v. Corrigan*, 257 U.S. 312, 327.
[46] See, *e.g., United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 253-254.

power of the state court to hold the union and its committee liable for the acts of the conspirators,[47] Louisiana's "Little Norris-La Guardia Act" having been ruled unconstitutional under the State Constitution.[48]

B.

THE DECISION IS OF LIMITED AND LOCAL IMPORTANCE ONLY.

No novel or far-reaching question has been decided. All that has been decided is that, on the precise factual situation presented, and upon the application of time-tested present-day rules, the petitioners were guilty of contempt. The injunction herein was directed only at violence and other illegal acts; it was narrowly drawn to meet the necessities disclosed by the record. It did not in any manner purport to restrict **legitimate** strike activities. The violations proven were violations of the plain letter of the writ.

Petitioners seek to bolster the importance of this decision by a trial court in the Parish of St. John The Baptist by implying that it results from a geographic resistance to the organization of labor upon the part of employers.[49] The record reflects, however, that the union in question has been the bargaining agent at respondent's refinery for over 15 years;[50] that this is the first strike in all the years of bargaining;[51] and that the only objective of respondent's legal proceedings was the sup-

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[47] *Cf. United Brotherhood of Carpenters and Joiners of America v. United States*, 330 U.S. 395, 404.

[48] *Douglas Public Service Corp. v. Gaspard*, 225 La. 972, 74 So. (2d) 182; *Arkansas Oak Flooring Co. v. United Mine Workers*, 227 La. 1109, 81 So. (2d) 413. And *cf.* Appendix 1, this brief, p. 20; application for writs to Louisiana Supreme Court, Tr. Vol. 4, p. 1 *et seq.*; order denying writs, Tr. Vol. 4, p. 379.

[49] Petition, p. 15.

[50] Tr. Vol. 3, p. 644.

[51] Tr. Vol. 3, p. 665.

pression of undoubtedly lawless acts.[52]

In reality all that this petition presents is a question of fact. The judgment below does not even provide a vehicle for future contempt action under the injunction, for the proceeding has been dismissed.

C.

THE DECISION WAS PLAINLY RIGHT: BUT, RIGHT OR WRONG, DOES NOT REFLECT A VIOLATION OF DUE PROCESS.

The testimony of petitioners' own witnesses established petitioners' participation in and leadership of a combination among certain union members having as its principal purpose the preventing of respondent's employees from working. The fact that acts of violence were done is inescapable on the record. The only real question of conflicting evidence was whether the combination planned to use illegal methods of obtaining its purpose.

As indicated by the questioning of opposing counsel, and by their subsequent pleadings, petitioners appear to take the position that it was incumbent upon respondent to have produced witnesses who overheard the plotting or who could otherwise testify as to the details of the concerted plan, and that the trial court, in the absence of some such testimony, was without right to conclude that the plan to use violence existed. Accordingly, petitioners contented themselves, at the trial, for the most part, with a bare denial of intention to use violence. The trial court found their denial unworthy of belief in the light of other testimony and of the circumstantial evidence adduced.[53]

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[52] See petition for injunction, Tr. Vol. 1, p. 2, *et seq.*; and see rule for contempt, Tr. Vol. 1, p. 207, *et seq.*

[53] Appendix 1, this brief, p. 22.

Some of the lawless acts were done under orders of those in authority in the strike organization. Others were evidently the result of concerted action by many. Many evidenced leadership and careful advance planning. The extent and character of the acts precluded the possibility that they were episodic and the acts of irresponsible individuals. The only organization in the area which could have had any reason to engage in a campaign of violence against respondent and its employees was the union and its strike organization. All of the violence was directed toward the obvious end of intimidating respondent's employees.

Therefore, the trial court, considering the force of the circumstantial evidence, and its views as to the credibility of petitioners' testimony (including certain quasi-admissions contained therein), concluded as a fact that the combination had planned to use, and had used, violence to effectuate its purpose.[54] Such a conclusion, we submit, is plainly supported by the evidence.

In any event, however, whether or not this Court would reach the same conclusion as an initial proposition, there can be no doubt that the decision herein accorded due process, for it may not successfully be contended that it was mere arbitrary action; and an erroneous decision does not violate due process.[55]

It might be noted here that, under the state law, the contempt proceeding is neither criminal nor civil in character, but is *sui generis*.[56] It is tried to the judge and not a jury. As the record will reflect, the trial court accorded all parties wide latitude as to the admission of

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[54] Appendix 1, this brief, pp. 22, 23.
[55] See authorities cited *supra*, n. 41.
[56] *City of Gretna v. Rossner*, 154 La. 117, 97 So. 335.

evidence. There can be no claim that petitioners were not given every opportunity to introduce admissible evidence in their defense, nor is there anything to show that the trial court in reaching its conclusion took into account any inadmissible evidence as to which proper objection had been made.[57]

It is submitted, therefore, that whether or not the decision below was plainly correct, it was plainly within the power of the trial court, was rendered after due notice and hearing, was based upon substantial evidence and tenable law, and could not amount to denial of due process.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[57] *Cf.* Appendix 1, this brief, pp. 20, 21, 22.

APPENDIX 1.

SUPREME COURT OF LOUISIANA

NO. 42,628

GODCHAUX SUGARS, INC.

versus

PRENTICE TAMPLAIN, ET AL.

In Re: United Packinghouse Workers of America Local No. 1124 (CIO), et al. Applying for Writs of Certiorari, Prohibition and Mandamus

OPPOSITION TO PETITION FOR SUPERVISORY WRITS

To the Honorable the Supreme Court of the State of Louisiana:

Now comes L. Robert Rivarde, Judge of the Twenty-Ninth Judicial District Court in and for the Parish of St. John the Baptist, State of Louisiana, who opposes the issuance of writs of certiorari, mandamus and prohibition herein, and respectfully shows that:

I.

The petition herein discloses that petitioners have mistaken the basis of the judgment rendered by Opponent as judge below, and have misconstrued its effect. Because of this circumstance, Opponent feels constrained to file this Opposition.

II.

It is Opponent's appreciation of the law of Louisiana that a conspiracy is a combination between two or more persons to accomplish a certain purpose; that the conspiracy is unlawful if either the purpose to be served or the means to be used are unlawful; and that, an illegal conspiracy having been found, an overt act pursuant to such conspiracy committed by one conspirator becomes the act of all conspirators. It is also Opponent's opinion that the above legal propositions are not now affected by Louisiana's "Little Norris LaGuardia Act" (R.S. 23:841 et seq.) in view of the recent decisions of this Court declaring said Act unconstitutional. (See, particularly *Arkansas Oak Flooring Company v. United Mine Workers*, ____ La. ____, 81 So. (2d) 413.) It is Opponent's further opinion that said Act is unconstitutional as a whole; that the sections thereof relied upon by petitioners cannot stand alone when the main purpose of the Act falls. Unless this is so, the Act will have the effect of doing indirectly that which this Court has said it may not do—restricting the inherent powers of the Louisiana Courts in granting needful writs.

The Federal authorities cited by petitioners construing the original Norris-LaGuardia Act are not controling, since the Federal Courts, not being constitutional courts, may have their jurisdiction restricted by Act of Congress. These cases do indicate, however, that except for the prohibition of the Norris-LaGuardia Act, the law requires that a conspirator be answerable for the act of a co-conspirator done pursuant to an illegal conspiracy.

III.

The evidence adduced at the trial of the preliminary injunction herein, by a combination of admissions by

union officials and circumstantial evidence, proved beyond doubt that there had been a concerted agreement among the union members to use force, violence and intimidation to prevent the employees of the plaintiff from working, and that a great number of overt acts had been done in furtherance of this conspiracy by union members. This evidence also established that the policies of this conspiracy were made by the union committee and that the committee actively directed the conduct of all strike activities. Under these circumstances Opponent found that the injunction should run against the Union itself and its officers, as well as against the individual union members apprehended in illegal acts.

After the injunction issued, the violence continued unabated until the present contempt rule was filed. From the great number of proven incidents of violence and intimidation, from the common purpose exhibited by these acts, and their similarity to the acts on which the preliminary injunction was based, the evidence presented on the rule for contempt established that the conspiracy to use illegal methods to attain the otherwise legal aims of the union had continued, so to speak, "under the same management."

Although a number of incidents were alleged in the rule for contempt as to which witnesses were not available, or as to which no identification of the offenders was possible, there still remained sufficient overt acts, committed in furtherance of the conspiracy and proved beyond a shadow of doubt, to establish the guilt of numerous individual conspirators. Such being the case, Opponent found that the members of the union committee who instituted and managed the conspiracy (as well as the union itself) were legally responsible for such

overt acts. Opponent did not consider worthy of belief the testimony of those members of the union committee who claimed no knowledge of or participation in any of the multitude of violent acts; who claimed never to have ever heard of incidents which were matters of common knowledge in the community.

Under such circumstances, and considering the demeanour of the various witnesses, Opponent could come to no other conclusion than that the parties in question were in contempt of the authority of the Court.

Opponent did **not** find that mere participation in a strike constitutes an illegal conspiracy. Nor did Opponent find that the mere holding of union office renders an officer liable for the acts of union members. The illegality of the conspiracy consisted, not in striking, but in combining to engage in a campaign of terrorism to further the strike ends. The responsibility of the union committee rested, not in their office alone, but in having instituted the illegal conspiracy, having continued and managed it after the injunction issued, and in having been co-conspirators with the members of the conspiracy who committed the overt acts.

IV.

Petitioners object to the type of evidence based upon which the conspiracy was found (in the injunction hearing) to exist, and was found (in the contempt hearing) to have continued to exist. This evidence consisted, as above noted, of admissions and quasi-admissions by union officers, and of a great quantity of undeniable surrounding circumstances. In most cases the fact of a conspiracy can only be proved by circumstantial evidence. Cf. 11 Am. Jur. 570. In both hearings the circumstances

testified to by credible witnesses could lead to no other conclusion than that the conspiracy existed, was unlawful, and had continued to exist after the injunction. As stated by the United States Supreme Court:

> "These acts of violence are neither episodic nor isolated. Judges need not be so innocent of the actualities of such an industrial conflict as this record discloses as to find in the Constitution a denial of the right . . . to conclude that the use of force on such a scale was not the conduct of a few irresponsible outsiders . . ." *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287, 85 L. Ed. 836.

V.

Petitioners claim that the suspended sentences were improperly imposed. They are mistaken in their assertion that the period of suspension is indefinite. The judgment rendered by Opponent does not fix any longer term for the period of suspension than the term of the sentence; accordingly, the period of suspension expires when the term of the sentence expires. Since the term of the sentence is definite, the period of suspension is definite, being co-extensive with the term of the sentence.

VI.

Opponent respectfully submits to the Court that under the law, and the evidence adduced before him, Opponent had no choice other than to render the judgment of preliminary injunction; that under the law, and the evidence adduced before him, Opponent could do no less than find the defendants in question guilty of contempt; that having found them guilty, it was incumbent upon Opponent, in order to maintain the dignity and authority of the Courts of Louisiana, to impose sentence on such

defendants; and that the sentences imposed were designed to uphold such authority and were neither harsh nor unreasonable.

WHEREFORE, Opponent respectfully prays that the petition herein be dismissed.

(s) L. ROBERT RIVARDE

L. ROBERT RIVARDE, JUDGE, TWENTY-NINTH JUDICIAL DISTRICT COURT, IN PROPRIA PERSONA.

APPENDIX 2.

TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

NO. 564

GODCHAUX SUGARS, INC.

versus

PRENTICE TAMPLAIN, ET AL.

JOINT MOTION TO DISCONTINUE

FILED DEC. 22, 1955
(s) MABEL F. CAZENAVE
DEPUTY CLERK

On joint motion of plaintiff herein, through its undersigned Attorneys, and of all defendants herein, through their undersigned Attorneys, and on suggesting to the Court that the strike at plaintiff's Reserve Refinery has been settled and terminated; that there now appears to be no necessity of continuing in effect the preliminary injunction heretofore granted herein; and that, accordingly, the parties to this proceeding have agreed, subject to the approval of the Court, to discontinue this proceeding, without prejudice, each party to bear its own costs;

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED That the preliminary injunction issued

herein be recalled and dissolved and that these proceedings stand discontinued, without prejudice, and that each party shall bear its own costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all bonds furnished by plaintiff in connection with the temporary restraining order or the preliminary injunction issued herein be and they are hereby cancelled and the liability of the respective principal and surety thereon terminated.

DONE at chambers this 21st day of December, 1955.

(s) L. ROBERT RIVARDE,
L. ROBERT RIVARDE,
JUDGE.

MARTIN AND HIMEL
KULLMAN AND LANG
MILLING, SAAL, SAUNDERS,
BENSON & WOODWARD

BY: (s) H. H. HILLYER, JR.
H. H. HILLYER, JR.,
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